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ABSTRACT

The guide presents facts and issues concerning sexual harassment and date rape so that college and university administration and governing boards can make informed decisions about programs, policy, and procedures to minimize the incidence of these problems on campus. The first part of the guide addresses sexual harassment: its definition; frequency of occurrence; impact; legal implications; board policy issues; and other issues such as confidentiality, liability, dealing informally with complaints, evidentiary standards for investigations, false charges, inclusion of lawyers in the hearing process, and freedom-of-speech issues; institutional response to victims; and development of educational and preventive measures. A checklist for boards to use in policy review and development is included. The second section of the guide addresses date rape: its definition; frequency of occurrence; how date rape occurs; impact; legal implications; board policy issues (elements of good policy, informal options, and elements in conducting an investigation); development of educational and preventive measures; and the institution's response to victims. Appended materials include the University of Iowa's stated policy on consensual sex and lists of additional resources concerning sexual harassment and date rape. Contains 26 references. (MSE)

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# *Sexual Harassment and Date Rape*

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BY BERNICE R. SANDLER

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CAMPUS LIFE
POLICY SERIES

POLICY GUIDELINES
FOR BOARDS

# Sexual Harassment and Date Rape

3

BY BERNICE R. SANDLER

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# *Foreword*

The issues of sexual harassment and date rape are among the most volatile confronting our campuses today. For many years ignored, misunderstood, and in some cases, covered up, these issues are now exerting a profound effect on campus life. Trustees need to address them forthrightly and constructively. This publication, the fourth in the AGB Campus Life Policy Series, will help governing boards develop policies and procedures to minimize the incidence of these problems on campus and to deal with them, when they arise, in ways that protect the victim, the accused, and the institution.

Far more than many other social issues facing governing boards, sexual harassment and date rape have been plagued by unclear definitions and a consequent lack of understanding among those involved. This confusion has made it difficult for administrators and trustees to determine their responsibilities, their exposure to liability, and their legal obligations. Author Bernice R. Sandler brings remarkable clarity to the subject, explaining what constitutes sexual harassment and date rape, outlining the laws governing these offenses, and suggesting institutional policies, procedures, and sanctions. She urges institutions to do what they are designed to do best—educate the campus community—as a key element in a strategy for eliminating harassment and rape.

Bernice R. Sandler is an expert on sex discrimination and equity for women on campus. Currently a senior associate with the Center for Women Policy Studies in Washington, D.C., she consults widely with colleges and universities and writes frequently about women's issues and discrimination. She played a major role in the development and passage of Title IX and other laws prohibiting sex discrimination in education.

The Association of Governing Boards is grateful to Sandler for offering sound guidance to boards in the development of policy on this difficult issue and to the Hitachi Foundation for sponsoring this work. The Hitachi Foundation has also sponsored the publication of the other three titles in AGB's Campus Life Policy Series: *AIDS and HIV*, *Alcohol and Drug Abuse*, and *Crime on Campus*.

Richard T. Ingram
President, AGB
Washington, D.C.

## *Titles in the Campus Life Policy Series*

*Crime on Campus,* by Philip Burling
*AIDS and HIV,* by Richard P. Keeling, M.D.
*Alcohol and Drug Abuse,* by Thomas G. Goodale
*Sexual Harrassment and Date Rape,* by Bernice R. Sandler

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# *Acknowledgments*

Many people contributed to this report. Karen Mulhauser, Antioch College trustee, first saw the need for this report and worked to make it happen, and Leslie R. Wolfe, executive director of the Center for Women Policy Studies, offered encouragement and advice that made the writing easier. Reviewers Robert Bonner, dean of students at Carleton College, and Sylvia Fishman, vice president for student affairs and dean of students at Hunter College, read the draft and provided helpful suggestions and comments. Donna Fowler and Dan Levin of the Association of Governing Boards oversaw the development and fruition of the paper and gave good guidance throughout. But the most recognition must go to the thousands of women who spoke of their pain of sexual harassment and rape and taught us what we needed to know.

# *Introduction*

Sexual harassment and date rape are old problems, but they are relatively new as campus issues. Until the 1970s, there were no words to label these behaviors. When either occurred, it was viewed, at best, as an individual aberration and not seen as part of a larger pattern or problem. These new words, "sexual harassment" and "acquaintance rape," have changed our thinking about both these issues. Sexually harassing behaviors, once unnoticed or perceived as normal and ignored, are now illegal. Rape is no longer seen as a crime that is only committed by strangers.

Virtually all colleges and universities are confronting these issues: What kinds of policies are needed? Which preventive programs work? How should charges be handled?

### *The Role of Board Members*

The impact of sexual harassment and rape on the learning environment and on student, faculty, and staff well-being, coupled with the legal obligations of board members, makes it imperative that trustees understand these issues and how they affect board responsibilities. Although trustees are generally not involved in the day-to-day operations of an institution, they have overall responsibility for the management of the college or university. In regard to sexual harassment and campus rape, boards can be helpful to institutions in the following ways:

- Overseeing the institution's programs and policies.
- Evaluating institutional response to complaints.
- Developing an institutional response to new issues as they arise.
- Periodically evaluating the appropriateness and effectiveness of policies and programs.

In addition to formal reviews, board members can also ask specific questions to ascertain the effectiveness and appropriateness of policies and programs. They can invite the person(s) who run these programs to talk to the board and thereby educate its members. This report will enable trustees of colleges and universities to understand these issues more fully so that they can provide the guidance their institutions need.

# PART I.
# SEXUAL HARASSMENT

# CHAPTER 1
# *What Is Sexual Harassment?*

Sexual harassment became a visible problem for higher education institutions in 1977 when Yale University was sued by five students who claimed sexual harassment by faculty. Sexual harassment came out of the dark forever.

Years later, many people have difficulty figuring out just what constitutes sexual harassment. Although the definition (see box) is helpful, it may be useful to think of sexual harassment as having three major characteristics:

- The behavior is unwanted and unwelcome.
- The behavior is sexual or related to the sex of a person.
- The behavior occurs in the context of a relationship where one person has more formal power than the other (such as a supervisor and an employee or a faculty member and a student) or more informal power (such as one peer over another).

The fact that the behavior is unwanted and unwelcome makes sexual harassment different from other behaviors that violate laws. Few people disagree about what has happened when someone has been robbed. In contrast, to some degree, sexual harassment is defined by the victim. If the behavior is unwelcome, it is sexual harassment. If the same behavior is welcome, as in reciprocal flirting, it is not sexual harassment.

**SEXUAL HARASSMENT DEFINED**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or academic advancement;

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting the person;

(3) such conduct has the purpose or effect of unreasonably interfering with a person's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.

Based on the Policy Statement on Sexual Harassment, Equal Employment Opportunity Commission, 1984, with additional wording to reflect coverage of students under Title IX.[1]

1. National Council for Research on Women, "Sexual Harassment: Research and Resources: a Report-in-Progress," November, 1991, p. 3-4.

Men and women may view the same behavior differently. A far-reaching ruling in 1991 by the Ninth Circuit Court in California recognized this when it stated that courts must determine what a "reasonable woman" would consider a hostile or oppressive work environment. Judge Robert Beezer stated, "Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive." [2]

When the courts first began to examine sexual harassment as a form of sexual discrimination, they concentrated on the types of behavior that are considered *quid pro quo*—"Sleep with me and I'll give you a promotion" or "If you don't sleep with me, you'll get fired." In 1986, the U.S. Supreme Court, in *Meritor v. Vinson*, expanded this definition to include the concept of a hostile environment; that is, harassing behaviors that create an environment so hostile or offensive that it interferes with a person's ability to work.[3] In the same way, a hostile climate can also interfere with a student's ability to learn or participate in the campus environment. The offensive environment type of sexual harassment is far more prevalent than the *quid pro quo* type.

Behavior that can be considered sexual harassment can occur once or often; it can be physical and verbal; it includes, but is not limited to, the following:

- Sexual innuendos and comment.
- Asking or commenting about a person's sexuality.
- Humor or jokes about sex or women in general.
- Sexually suggestive sounds or gestures, including winking and throwing kisses.
- Pestering a person for dates.
- Touching, patting, pinching, brushing against a person.
- Giving a neck or shoulder massage.
- Ogling, leering.
- Threats or bribes, implied or direct.
- Sexual assault.

What makes sexual harassment different from ordinary flirting is that it occurs in the context of a power imbalance. Most discussions of sexual harassment in academe have focused on the *formal* power that supervisors have over employees and that faculty and staff have over students—people with the formal power to provide a benefit (a grade or a promotion, for example), a service or an evaluation, or the power to withhold these and to do harm. However, the *informal* power that men, by virtue of their larger size, greater physical strength, and status, generally have over women can also be part of the context of sexual harassment, so that coworkers and fellow students can also harass. An area of growing concern on campus is the peer

2. *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991).
3. *Meritor Savings Bank, FSB, v. Vinson*, 477 U.S. 57 (1986).

harassment of female students by male students.[4] Behavior such as the following can be considered sexual harassment:

- Shouting obscenities at women as they pass a fraternity house or other places where men gather.
- Loudly discussing a woman's sexual attributes and rating her attractiveness, a practice called "scoping."
- "Mooning" women, whereby men expose their buttocks aggressively.
- Pulling down women's shorts or pants.
- Creating a sexually demeaning atmosphere, such as displaying posters and pictures that are sexist or otherwise demeaning to women, or having social events focusing on women's sexuality, such as wet T-shirt contests.
- Showing petty hostility to women, by throwing things, pouring drinks over women's heads or on their breasts, heckling women when they enter a room, or making sexual remarks.
- Engaging in sexual banter and telling sexual jokes, including leaving obscene messages on campus computers.

## HUMOR AND SEXUAL HARASSMENT

Sometimes sexual harassment takes the form of "humorous" remarks. Humor can be used in an aggressive manner to define "outsiders," to express direct or unconscious hostility, and to build group solidarity against an outsider. One can see the hostility of humor in ethnic jokes that demean various groups or so-called "locker-room" jokes that are demeaning to women.

Sexist and sexual remarks and stories are often told in the presence of women without any awareness that they can be offensive to many women. Should a woman complain, she is typically asked, "Can't you take a joke?" as if the fault were hers and not that of the joke-teller. Catharine Stimpson explains why some men will use humor as a form of harassment:

> Disguising the language of harassment as humor has several advantages. First it draws on our old, shrewd assessment of much sexual behavior as funny and comic. Next, it simultaneously inflates the harasser to the status of good fellow, able to tell a joke, and deflates the harassed to the status of prude, unable to take one.[5]

Sometimes, a person will introduce a joke with, "You women probably won't like this joke," and then tell the story, clearly indicating that the discomfort of women is of no consequence. Just as racist humor hurts people of color, sexist humor hurts women.

4. See "Peer Harassment: Hassles for Women on Campus," by Jean O'Gorman Hughes and Bernice R. Sandler for a comprehensive treatment of the subject. Published by the Association of American Colleges, Project on the Status and Education of Women, 1988; reprinted by the Center for Women Policy Studies, Washington, D.C., 1992.

5. Catharine R. Stimpson, "Overreaching, Sexual Harassment and Education," in Michele A. Paludi and Richard B. Barickman, *Academic and Workplace Sexual Harassment: A Resource Manual*, Albany: State University of New York Press, 1991, p.121, note 6.

- Making inappropriate remarks about a woman's body or her sexual activities.
- Touching and grabbing women. (Women students have had their breasts, buttocks, and crotch grabbed and fondled by strangers or new acquaintances, especially at parties.)
- Persistent unwanted sexual attention, such as asking a woman for a date long after she has indicated a lack of interest.

Student-to-student harassment is not always seen as harassment and may be viewed as "normal" or "boys will be boys" behavior. Some institutional policies and programs dealing with sexual harassment do not include student-to-student behavior.

### *How Often Does Sexual Harassment Occur?*

- At the University of Minnesota, from 41 percent to 56 percent of women (including undergraduate and graduate students, academic employees, and civil service staff) said they had experienced at least one type of sexual harassment during their time at the university.[6]
- In a survey of faculty at an unnamed research-oriented university concerning interactions between faculty and students, more than 25 percent of faculty indicated they had dated students, while a slightly higher percentage said they had sexual encounters or relationships with students. Eleven percent indicated they had attempted to stroke, caress, or touch female students. Despite these numbers, only one subject reported that he believed that he had sexually harassed a student.[7]

Sexual harassment on campus is not uncommon. Although many institutions have never had a complaint or have had only a few, the absence of complaints does not mean the absence of the problem. For example, a study at Harvard showed that only 5 percent of the students who had an experience they would label as sexual harassment reported it to a college official.[8]

Studies conducted by several universities indicate that from 20 percent to 30 percent of all female undergraduates report they have experienced some form of sexual harassment from faculty or administrators, such as leering, sexual innuendo or comments, humor or jokes about sex or women in general, unwanted touching or other physical contact, and direct or indirect threats or bribes for sexual activity.[9]

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6. University of Minnesota Center for Survey Research, 1990, as quoted in "University of Minnesota Documents Harassment," *On Campus With Women*, Association of American Colleges, Project on the Status and Education of Women, Vol. 20, No. 3, Winter 1990, p. 5.
7. Louise F. Fitzgerald, Lauren M. Weitzman, Yael Gold, and Mimi Omerod, "Academic Harassment: Sex and Denial in Scholarly Garb," *Psychology of Women Quarterly*, Vol. 12, No. 3, September 1988, pp. 329-340.
8. "Report of the Date Rape Task Force, Harvard and Radcliffe Colleges," February 10, 1992.
9. Many institutions have conducted their own studies on sexual harassment. The figures given are from an examination of a number of such studies and represent the range in which the percentage of

Using the lower figure of 20 percent means that more than 1.4 million students experience harassment. As more attention is paid to hostile-environment types of harassment, some studies are showing even higher figures: In the University of Minnesota study mentioned previously, 52 percent of the female graduate students and 42 percent of the female undergraduate students said they had experienced sex-stereotyped comments, depictions, or jokes, compared with 68 percent of the female academic employees and 59 percent of the female civil-service staff.[10]

About 2 percent of undergraduate women—over 140,000 students—report they have received direct or indirect threats or bribes for unwanted sexual activity. For graduate women, all forms of sexual harassment are more frequent. Between 30 percent and 40 percent say they experience some sexual harassment from faculty or administrators. Only a few studies have examined sexual harassment of faculty, with figures ranging from 20 percent to 50 percent reporting harassment from other faculty, department chairs, or other administrators. A small percentage of cases in academe—perhaps 3 percent to 5 percent—involve male students being harassed by either male or female faculty or staff. A tiny percentage consists of women harassed by other women.[11]

In the few studies that have examined student-to-student harassment, 70 percent to 90 percent of undergraduate women report at least one or more males had exhibited one form of unwanted gender-related behavior to which they reacted negatively and which they viewed as serious. Figures for staff vary because the work settings vary more than the classroom. The majority of workplace studies suggest that from 28 percent to 75 percent of employees report having experienced sexual harassment.[12]

Women of color are often victims of sexual harassment. Because harassment is intimately related to power, women of color are more likely to be victimized because they are viewed by some men as more vulnerable than white women. Stereotypes about women of color as "lazy," "loose," "deferential to men," "highly sexed," and so forth may add to their being viewed as likely targets of harassment.[13] In addition to harassment from faculty, women students of color may especially be prone to

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students harassed fell. See, for example, studies at the University of Massachusetts (1987) of graduate students; Cornell University, upperclass and graduate students (1987); University of California at Berkeley, seniors (1989); North Carolina State University, undergraduate and graduate students, faculty, and staff (1989); University of Minnesota, undergraduate and graduate students, faculty, and staff (1990).

10. University of Minnesota Center for Survey Research as quoted in "University of Minnesota Documents Harassment," *On Campus With Women*, Association of American Colleges, Project on the Status and Education of Women, Vol. 20, No. 3, Winter 1990, p. 5.

11. Because the vast majority of harassers are male and most victims female, I have used the pronoun "he" throughout to refer to the harasser and "she" to refer to the person being harassed.

12. James E. Gruber, "Sexual Harassment Research: Problems and Proposals," paper presented at the annual meeting of the American Sociological Association, August 1989, Table I.

13. Darlene DeFour, "The Interface of Racism and Sexism on College Campuses," *Ivory Power: Sexual Harassment on Campus*, pp. 45-52.

## MYTHS ABOUT SEXUAL HARASSMENT

*Myth: Just saying "No" should make it stop.*

Fact: Although saying "No" does work occasionally, many men still believe that women who say "No" really mean "Yes," and therefore ignore their protests.

*Myth: Harassment will stop if it is ignored.*

Fact: Harassers often believe that when a woman ignores harassing behavior, she likes it. Her lack of response is seen as approval or encouragement. Studies show that in most cases when harassment is ignored it continues and often gets worse.

*Myth: If women watched the way they dressed, there would not be a problem with sexual harassment.*

Fact: Sexual harassment can happen to anyone, no matter how she dresses. It typically has far more to do with power than with sexual attractiveness or appearance.

*Myth: Sexual harassment is no big deal—it's the natural way men and women express affection and friendship with each other.*

Fact: Unwanted sexual innuendo, grabbing, and lewd comments are not expressions of affection and friendship, but rather expressions of power, a need to control, and in some instances, hostility toward women. Truly friendly behavior is not hurtful.

*Myth: Sexual harassment is less likely to affect women professionals compared with other women.*

Fact: Women professionals report sexual harassment proportionally as often as other working women.

*Myth: Sexual harassment is harmless. Women who object have no sense of humor or don't know how to accept a compliment.*

Fact: Harassment is humiliating and often frightening. It can undermine careers and economic livelihood. No one should have to endure humiliation with a smile.

*Myth: Sexual-harassment policies will negatively affect professors' friendly relationships with women students.*

Fact: Sexual harassment is not the type of social relationship that professors should be having with students. Friendship and sexual harassment are very different relationships.

*Myth: Nice guys could not possibly be harassers.*

Fact: Harassers typically are not perverts and generally do not fit any particular mold. They come in all forms, including well-liked, talented, respected professionals.

harassment from white male students who may view them as "exotic erotics" or as targets of ridicule. Sometimes racism and sexism are combined, as in epithets such as "black bitch." Some white fraternities have sexual rituals that humiliate African-American or Hispanic women.

Disabled women also report harassment due to stereotypes about their sexuality and attractiveness. Lesbians may also be victims of harassment because of homophobic attitudes.[14]

14. Michele A. Paludi and Richard B. Barickman, *Academic and Workplace Sexual Harassment, a Resource Manual.* Albany: State University of New York Press, 1991, p. 14.

Most faculty and staff do not harass, but of those who do, most harass a number of women, usually sequentially, simultaneously, or both.

### *The Impact of Sexual Harassment*

Sexual harassment has a wide-ranging effect on the learning and work environment. It is an issue that can affect everyone on campus.

*Impact on women.* Like rape, sexual harassment has often been treated as a joke or blamed on the victim herself. The long history of silence on the subject makes many women feel uncomfortable, embarrassed, or ashamed. They may be afraid it will reflect badly on their character or that somehow they will be viewed as having invited the behavior. Women often blame themselves, experience unjustified guilt, and fear repercussions if they say anything to the offender or to anyone else. They may even feel too ashamed to tell friends or family.

Refusing sexual demands can jeopardize a woman's job or academic success. She can't freely choose to say "Yes" or "No" in such a situation. Often she fears retaliation —and with good reason: Rejected men do not always respond with good grace. Reprisals are not unusual. Unfair evaluations may be given; perks can be removed; promotions and raises denied; the chance of a summer internship or a good recommendation to graduate school withheld.

A woman who is harassed is often unsure how to handle it. She may be uncertain if a *real* injustice has occurred. Did he really touch her breast or did she imagine it? If he did touch her in a sexual way, is it something she ought to complain about? Will anyone take her seriously if she does? How should she respond to sexual innuendo or questions about her sexual activity without offending the more powerful harasser? On the one hand, if she ignores it, it may worsen; her lack of response may be interpreted as approval. On the other hand, if she takes a strong stand, the harasser may not take her seriously. After all, don't women always say "No?" And if she complains elsewhere, she may be labeled a troublemaker and told she ought to be able to handle it herself.

Her self-esteem and self-confidence may diminish. She may suffer physical symptoms typical of stress, such as stomach problems or headaches; the label "sexual harassment trauma syndrome" has been applied to women suffering these symptoms. Depending, in part, on the severity of the harassment, from 21 percent to 82 percent of women who have been harassed report that they experienced psychological and/or physical symptoms similar to those experienced by rape victims.[15] A woman's work or academic performance may suffer. Women have been fired, quit jobs, dropped classes, changed majors or schools, and even dropped out.

For graduate students, the effect is compounded by the fear that any show of displeasure may jeopardize her future career. The fear is not groundless; one woman

15. Mary P. Koss, "Changed Lives: The Psychological Impact of Sexual Harassment," in Michele A. Paludi, ed., *Ivory Power: Sexual Harassment on Campus*, Albany: State University of New York Press, 1990, pp. 73-92.

who filed successfully against her graduate professor found herself isolated in her department. When no faculty member would agree to serve on her doctoral committee, she was forced to transfer to another school. Sexual harassment of any kind may make a student fearful of interactions with her professor. How can she meet with him for advice on her project if she is worried that he may grab her, ask for sexual favors, or otherwise make her uncomfortable?

Women who are not harassed may also suffer the effects of harassment when it happens to other women. They too may feel powerless and worry about what they would do if it happened to them. In some instances, they will avoid classes taught by a known harasser.

When male faculty or students create a hostile or offensive environment for women students, they send a message to women that they are not equal to men and that they are not taken seriously. Sexual slurs and other forms of harassment hurt women. They may feel helpless, powerless, and isolated. They may feel embarrassed and degraded, angry or insulted. Some women who experience severe harassment may have trouble trusting men because they come to believe that all men may behave the same way. Some women may drop out of science and other nontraditional fields when they are harassed by male classmates.

*Impact on men.* When faculty confuse friendly behavior towards students with sexual harassment, they may be fearful of any informal interactions with women students, thereby depriving them of the informal mentoring essential to many students' development.

When male students harass women with impunity, the implication is that harassment is acceptable and that women are fair game. Thus, men may be learning to engage in behavior that is illegal in the workplace they soon will enter. When men are accustomed to relating to women as objects of derision, they may find it difficult to treat women as equal human beings because it is hard to relate to people for whom one has little respect.

*Impact on the institution.* Some schools have had bad publicity or controversy about cases of sexual harassment by faculty, especially when the school handled it badly or when the policy was unclear or not enforced consistently. Similarly, when incidents concerning harassment of women students by men students have been publicized or sometimes communicated by word of mouth, this can lead to decreased applications from women.[16] Women are increasingly considering the climate of an institution when they apply to college.

More important than bad publicity or controversy is the impact of harassment on the learning climate. In an atmosphere where harassment occurs, even if it occurs to other people, learning is difficult. Harassment chills the learning climate and subverts the very purpose of the institution.

16. Student guides at Princeton reported that high school students on campus often ask, "What it is like to be a woman at Princeton?" Edward B. Fiske, "A New President in a Week of Rallies and Parties," *New York Times*, April 30, 1987, p. B-3.

# CHAPTER 2
# *Legal Implications*

- The Board of Regents of the University of Texas at Austin fired a tenured professor of art history, who was accused of harassing a graduate student.[1]
- The University of Washington, accused of knowing about but not stopping sexual harassment by a faculty member, agreed to pay a student $125,000 plus lawyer's fees.[2]
- A professor of literature sued the Massachusetts Institute of Technology for failing to stem "a pattern of professional, political, and sexual harassment."[3]
- In one of the largest awards of its kind, a federal jury awarded $675,000 to a Loudoun County, Virginia, employee after finding that she was a victim of sexual harassment from her boss. Among other insults, he had called her a "stupid woman" in front of coworkers and berated her for being "weak like a woman."[4]

Because sexual harassment is a form of sexual discrimination prohibited by law, all of the federal and state laws prohibiting sexual discrimination also prohibit sexual harassment.[5] Under all the various laws—federal, state, and local—sexual harassment of men is also prohibited. A brief summary of the major prohibitions follows.

*Title VII of the Civil Rights Act of 1964.* Title VII covers all employers, including education institutions, and prohibits discrimination on the basis of race, color, national origin, religion, and sex. Only employees (including student employees) are covered. The Civil Rights Act of 1991 allows compensatory and punitive damages to be awarded, ranging from $50,000 in institutions with 15-100 employees up to $300,000 in institutions with more than 500 employees. Title VII is enforced by the Equal Employment Opportunity Commission.

*Title IX of the Education Amendments of 1972.* Title IX prohibits sex discrimination in schools receiving any federal assistance, including financial aid; virtually all

1. *About Women on Campus*, Vol. 1, No. 2, Spring 1992, p. 7.
2. *Chronicle of Higher Education*, May 27, 1992.
3. *Chronicle of Higher Education*, April 15, 1992.
4. *Washington Post*, June 20, 1992.
5. For a summary of federal laws in chart form see "Federal Laws and Regulations Prohibiting Sex Discrimination in Educational Institutions" prepared by the National Women's Law Center and available from the Center for Women Policy Studies, 2000 P Street, NW, Suite 508, Washington, D.C. 20036. ($5)

institutions of higher education are covered. Discrimination, including sexual harassment, is prohibited in the entire school, not just the program receiving federal funds.[6] Students and employees are covered. In February 1992, the U.S. Supreme Court unanimously ruled that complainants under Title IX may sue for damages. Unlike Title VII, there is no cap on the dollar amount that can be recovered. Title IX is enforced by the Office for Civil Rights in the U.S. Department of Education.

Title IX requires that institutions have procedures for handling discrimination complaints. Although an institution may use this procedure for sexual harassment complaints, most institutions have developed a separate procedure for sexual harassment complaints.

Title IX also requires that an institution provide an environment free of discrimination. Although no case involving student-to-student harassment has yet reached the Supreme Court, the federal government and the courts follow the concepts developed under employment discrimination law (Title VII). Thus, it may be expected that the court would follow precedent set in *Meritor v. Vinson* defining a hostile environment. In that case, the court held under Title VII that an employer may be liable for the actions of coworkers and peers when their sexual harassment creates a hostile environment. Similarly, it may be expected that schools would also be held liable under Title IX for sexual harassment of students by students, including the creation of a hostile environment that interferes with a student's learning and well-being.[7] The Office for Civil Rights in the U.S. Department of Education accepts student-to-student harassment cases.[8]

Under Title VII and Title IX, institutions are likely to be liable when:

- The harasser is an agent or employee of the institution or under the institution's control, such as a student, student organization, or vendor.
- The harasser is in a position to affect the employment conditions, or in the case of a student, the academic success, of the victim; and/or the harasser has created a hostile work or learning environment.

6. Title IX had been interpreted by the federal government to cover all activities and programs of education institutions receiving federal funds. However, in 1984, the U.S. Supreme Court ruled in *Grove City College v. Bell* that Title IX covered only those specific programs and activities funded with federal money. As a result, discrimination in many programs and activities was no longer prohibited by Title IX because the programs and activities did not receive direct federal funds. On March 22, 1988, Congress enacted the Civil Rights Restoration Act of 1987 over President Reagan's veto. The act overturned the court's decision and restored Title IX coverage so that once again Title IX applies to the entire institution, regardless of where federal funds are utilized. For a summary of the Civil Rights Restoration Act, see "The Restoration of Title IX: Implications for Higher Education," by Bernice R. Sandler. Published by the Association of American Colleges, Project on the Status and Education of Women, 1989. Available from the Center for Women Policy Studies, Washington, D.C.

7. "Peer Harassment: Hassles for Women on Campus," p. 8.

8. In October 1992, the Office for Civil Rights agreed to investigate the charges of a 7-year-old girl who claimed sexual harassment by boys on her school bus who use foul language and engage in lewd behavior.

- The institution did not provide prompt remedies or corrective action once it knew or should have known that incidents of harassment had occurred.

Thus, to the extent that institutional employees ignore a student's or employee's plight or requests for assistance, the institution may be liable, even if a formal charge has not been filed.

### *Other Laws*

Most states have fair-employment practices statutes that also prohibit sex discrimination, including sexual harassment. Some counties and cities have passed antidiscrimination statutes that may also apply, and some cities have statutes specifically prohibiting sexual harassment.[9] State sexual abuse and assault laws may also apply to some physical forms of sexual harassment.

In some cases, students and employees may be able to sue for monetary relief by instituting tort actions, such as charges of assault and battery, intentional infliction of emotional distress, defamation, interfering with an employment contract, intrusion (invasion of privacy), wrongful discharge, or rape.

Untried, but also possible, might be a suit for breach of contract. Institutions are required under Title IX to publish a notice stating that the institution does not discriminate: The notice might be construed as creating a contractual obligation between students or employees and the institution, so that a student or employee who did not obtain relief when she complained might be able to sue for breach of contract.

Regardless of the legal obligations, however, schools have a strong moral obligation to ensure that students and employees are treated well throughout the institution.

9. The city of Annapolis, Md., defines sexual harassment as a misdemeanor, punishable by a $1,000 fine and up to six months in jail. The city of Milwaukee has a similar law.

# CHAPTER 3
# *The Board's Response: Policy Issues*

### *A Checklist for Board Members*

Institutions have best responded to issues of sexual harassment when they have developed a plan that includes:

- A comprehensive policy prohibiting sexual harassment.
- The development and implementation of informal procedures to supplement a formal complaint process.
- The development and implementation of an ongoing education and prevention program.

Additionally, institutions need to manage the public response when issues or complaints of sexual harassment arise, determine the way they will respond to victims both as complainants and as people who may need services, and ensure that the rights of all parties are protected.

Although antidiscrimination policies cover sexual harassment, most schools find it helpful to have a separate policy specifically prohibiting sexual harassment. A separate policy may help shield the institution from liability by indicating its concern about the issue, but more importantly, it will help address and prevent the problem more effectively.

The following checklist may be helpful to board members as they evaluate their institution's policy:

*Does the policy cover the entire campus community as well as the different types of harassment?*

Are all students covered?

Are all faculty and employees covered?

Are teaching/research assistants covered?

Is student-to-student harassment covered?

Does the policy cover instances of hostile environment? In the workplace? In the classröom? Elsewhere in the college community?

Are vendors, including contractors, prohibited from harassing students and employees? Because the institution is required to provide a nondiscriminatory environment, it is responsible for the way vendors and contractors treat students and employees.

Whether the policy specifically covers these groups, all individuals on campus are nevertheless protected by law and may raise issues of sexual harassment that the policy does not address.

*What is the relationship of the policy to other grievance procedures?*

How does it relate to union grievance procedures, if any?

How does it relate to faculty grievance procedures?

Most schools use *the same policy* prohibiting sexual harassment for faculty, staff, and students, although the *procedures* may differ for each group. Many schools set up separate procedures for handling sexual-harassment complaints, which helps ensure that the people who implement the procedures gain experience with sexual harassment and provide a consistent response.

*What should the policy include?*

The key elements of a good policy are as follows:[1]

- **A definition of sexual harassment.** The definition should be broad enough to cover a wide range of behavior, including perpetuating or creating a hostile work or learning environment, and should include student-to-student harassment. Examples should be given.
- **A brief description of how sexual harassment affects individuals.**
- **A policy statement that clearly prohibits these behaviors.** Where appropriate, it might also refer to faculty and student codes of conduct.
- **A strong statement prohibiting retaliation or reprisals against anyone reporting sexual harassment behaviors.**[2]
- **Reference to legal prohibitions.** Title VII, Title IX, sexual abuse and assault laws, civil laws, and any state prohibitions should be listed.
- **Sanctions.** Sanctions may differ for staff, faculty, and students. Some examples of sanctions follow, although others might be included.

  - Written warning.
  - Letter of reprimand.
  - Loss of choice assignments.
  - Suspension, probation, termination, or expulsion.
  - Suspension of salary raises for a specific time.
  - Change of job (removing the person from being in a position to retaliate or further affect the victim).[3]

1. See American Council on Education, "Sexual Harassment on Campus: A Policy and Program of Deterrence," 1992.

2. A person could be innocent of sexual harassment but guilty of retaliation.

3. The institution needs to be certain that it is not just moving the problem to another setting. However, if moving is necessary, the focus should be on moving the harasser rather than the victim, although occasionally this may be necessary, especially if that is what the victim desires.

- Advice and counseling.[4]
- Requiring attendance at a sexual-harassment training program.

In addition to the foregoing, the following may be helpful with students or groups of students guilty of harassment:

- Prohibiting the person(s) from holding office or participating in student activities, including sports.
- Disbanding or suspending a fraternity or other student group involved in sexual harassment.
- Housing transfer or banishment from institutional housing facilities.
- If alcohol was involved, requiring attendance at a program on alcohol abuse.
- Requiring relevant community service, such as preparing posters or disseminating information about peer harassment.
- Requiring perpetrators to attend workshops on peer harassment.

■ **A description of complaint procedures.** Sometimes these are listed separately elsewhere, so that the policy simply refers to them. This section should describe time frames, who handles complaints, who does the investigation, who makes the ruling of innocence or guilt, who decides the penalty, and any appeals process.

■ **A description of informal procedures that might be used in lieu of formal complaint procedures.** Because more than 90 percent of victims do not want to file a formal charge, it is critical that institutions develop good informal procedures to handle sexual harassment. (See section on informal procedures).

■ **A description of the proper authority to contact if a person is experiencing sexual harassment.** Many schools have multiple points of access, such as a dean, members of a sexual-harassment committee, student volunteers, and others. Having more than one point of access makes it easier for victims to choose a point of entry into the system for handling sexual harassment.

■ **A statement about consensual sexual relationships.**[5] An increasing number of schools are developing policies prohibiting consensual sexual relationships between students and faculty or staff who provide a benefit, service, or evaluation. This issue is often fraught with controversy. Many people believe that a truly consensual relationship may not be possible between two people where there is a large power differential because the relationship is potentially exploitative. Institutions that have developed policies usually deal with the issue in either of the following ways:

1. **Consensual relationships are neither banned nor accepted but described as problematic.** The University of Michigan's policy does not prohibit "romantic or sexual relationships" but points out that such relationships can raise "serious concerns." Consensual relationships between faculty or staff and students require disclo-

4. Although advice and counseling are occasionally appropriate, on many campuses they have been overused. Counseling and advice should never be the only sanction.
5. See University of Iowa policy in Appendix A.

sure to the appropriate administrative supervisor so that arrangements can be made for objective evaluation and decision-making with regard to the student. The policy also notes that romantic or sexual relationships outside the instructional or supervisory context can also lead to difficulties. Similarly, the University of Wisconsin System condemns romantic and/or sexual relationships between faculty or other instructional staff and students or between supervisors and subordinates. The policy focuses on conflict of interest and abuse of power.

The Massachusetts Institute of Technology requires that anyone who has a supervisory or educational responsibility for an employee, other faculty member, or student should divest himself or herself of that responsibility if a personal involvement develops between the two people. At the University of Minnesota, the fact that a relationship was consensual at one time cannot be a defense to a subsequent charge of sexual harassment. This policy acknowledges that consensual relationships can turn into sexual harassment when the person with power refuses to let the person without power end the relationship.

2. **Consensual relationships are prohibited.** The Board of Trustees of the Vermont State Colleges system and the University of Iowa prohibit amorous relationships between a student and an individual with professional responsibility for that student.

■ **Reporting requirements.** A few campuses require that faculty and employees observing or knowing about instances of sexual harassment must report them, just as they are obligated to report other instances of improper behavior. Another major problem on many campuses is how to track repeated offenses by the same individual when victims do not file formal charges but report the behavior to different individuals. This issue is discussed more fully in the section on confidentiality.

■ **The name of the person or administrative group responsible for policy and educational efforts.**

■ **A list of resources.** A short list of articles, books, and videos that are readily available from the library or specific offices should be included.

Boards can also request, as do the trustees of the University of Wisconsin System, that each institution submit an annual report concerning sexual harassment, in conjunction with the institution's annual report to the board on equal opportunity. The report includes information on the effectiveness of current sexual-harassment grievance procedures, sanctions and remedies, and descriptions of educational programs provided to address sexual harassment.

### *Other Issues*

**Confidentiality.**

Because of the sensitive nature of sexual-harassment charges, many institutions have developed policies on confidentiality. Most complainants desire confidentiality, and some will not tell anyone about harassment if they believe their name will be

## CONSENSUAL RELATIONSHIPS OF STUDENTS WITH FACULTY OR STAFF: NOT A GOOD IDEA[6]

While consensual relationships between students and faculty or staff may not always be unethical (almost everyone knows of a professor who married his graduate student), they are almost always problematic, not only for the parties involved but also for other students, faculty members, or employees. Because the parties in the relationship are not equal in power, the relationship is quite different from one in which either party is free to accept, decline, or end the relationship.

Sometimes a student or employee may be "seduced" into a consensual relationship, especially in the case of a young student dazzled by the attention of an older, more powerful man. The potential for exploitation is clear, and explains why many professional organizations have codes of ethics prohibiting relationships between professional and client—a relationship analogous to the relationship of teacher and student, although less so for supervisor and employee.

A consensual relationship also raises issues of conflict of interest. Can a supervisor or faculty member fairly evaluate someone with whom they are engaged in a consensual relationship?

Moreover, others who know about the relationship are likely to be skeptical of any evaluations, perks, or favors given to the person and attribute them to the relationship, validly or not. Employees or students involved in such relationships may find it difficult to evaluate their own achievements: Did they deserve the positive evaluation, or was it simply the result of the relationship? Finally, colleagues or fellow students may feel uncomfortable and find it difficult to relate to the persons involved in such a relationship.

When one person is in a position to provide a benefit, service, or evaluation, the potential for abuse of power exists not only during the relationship but also after it ends. Both parties may feel awkward with each other. Some women will feel they need to avoid an ex-boyfriend and his colleagues as well, but even a relationship that ends amicably can cause difficulty. The student or employee cannot be sure what kind of future evaluations she will receive or how the former lover's feelings will affect his future behavior.

divulged. Often they just want to tell someone about the experience and are ambivalent about what they want to happen next. They may need reassurance about the institution's commitment to protect them against retaliation and want to know what can be done to alleviate the problem. The issue can be resolved in a number of ways without divulging the victim's name. (See section on informal means of resolving sexual harassment). Some institutions, conscious of their need to respond,

6. See Elisabeth A. Keller. "Consensual Amorous Relationships Between Faculty and Students: The Constitutional Right to Privacy," and Sue Rosenberg Zalk, Judith Dederich, and Michele A. Paludi, "Women Students' Assessment of Consensual Relationships with their Professors: Ivory Power Reconsidered." Both appear in *Sexual Harassment on Campus: A Legal Compendium*, Second Edition, Elsa Kircher Cole, editor, National Association of College and University Attorneys, 1990, Washington, D.C.

require that records of informal complaints be kept but that the name of the complainant be omitted if she so desires.

There are times, however, especially in instances of severe harassment, in which the institution must intervene (as in a case of sexual assault) to address a serious situation and to protect itself from future liability. The victim's name, as well as that of the professor or staff member, should not be divulged except under a "need to know" situation. While the institution can require its agents—faculty and staff—not to divulge information about individual cases, it cannot necessarily prohibit the victim and the alleged harasser from divulging information to others. An exception to this might be instituting a "gag" rule during the course of a hearing until the matter is resolved.

Issues of confidentiality are also involved in the maintenance of records and efforts to identify instances of multiple harassment by the same person. On many campuses, it is difficult to recognize repeat offenders because no record of informal complaints is kept, records may be scattered throughout the institution, or those in a position to know, such as an affirmative-action officer or a dean, are no longer in that position.

Institutions need to develop some sort of system to keep track of complaints. Some institutions have developed a central locked file with information about informal complaints. Only one person, such as a dean or affirmative-action officer, has access to the information in the locked file. The information may be used in subsequent complaints against the same person in assessing whether a pattern of harassment exists. This has been a controversial issue on many campuses. Faculty members resent having a secret file about them without knowing what is in it. Certainly, if such a file exists, no formal action based on the information in it could be taken without informing the person about the information and providing them with an opportunity to respond.

The faculty at the College of Arts and Sciences at Cornell University has devised a procedure to deal with this issue. Students who are harassed can speak with one of two sexual-harassment senior counselors, a man and woman (both tenured) who are appointed by the dean and who have undergone special training for the position. If a student does not want to file a formal complaint immediately, she or he can file a written complaint that may be pursued at a later date, such as at the end of a semester, after graduation, or after other people have complained about the same person. Complainants are more likely to file a formal charge when others are willing to do so against the same person.

The complaint is kept in a locked box or file to which only the senior counselors have access. Before putting the complaint into the locked box, the senior counselor determines if the complaint has merit and marks it as such. The locked box preserves institutional memory of informal complaints. However, if an institution adopts such a procedure, it still needs to respond to such complaints even if they are not formal charges. (See section on dealing informally with complaints.)

Some institutions have tried to keep confidential the settlement of formal charges, simply saying that the matter was addressed and is now closed. Many people object to this, claiming it is analogous to a court's failing to reveal the sentence for an offender. When this happens, rumors typically abound and the inaccurate assumption is often made that the institution did nothing. Moreover, it is difficult to keep these matters totally confidential, and often part or all of the information leaks out in ways that are damaging to the institution, particularly if the information is inaccurate. It is often better for the institution to control the flow of information rather than assume that it will be kept confidential.

**Liability.**

Institutions have a responsibility under law to provide a nondiscriminatory environment. Having a strong policy and enforcing it is good protection against charges of sexual harassment.

Responding to information about sexually harassing behavior is critical. Once an institution knows or should have known that harassment has occurred, it must address the situation if it is to avoid liability. Whether a formal charge has been lodged or information merely reported, the institution needs to respond. Institutions that do not respond to informal complaints may be liable. Although standards of institutional liability are still evolving in the area of harassment, it is clear that when acts of harassment are serious and repeated and an institution takes no preventive measures, the likelihood of institutional liability increases substantially.

Institutions may also incur liability when information about sexual-harassment allegations or charges is withheld from a prospective employer of the alleged harasser in the event that a third party is later damaged by the employee. For example, a professor leaves an institution in part or solely because of charges or allegations of sexual harassment. Because the first institution gives him excellent references, the second institution hires him. The professor again harasses students, one of whom attempts suicide as a result of his harassment. Is the first institution liable? Possibly, especially when the first institution knew or should have known about the danger posed by the employee and could reasonably expect the employee to have contact with the party ultimately injured.

Mentioning charges or allegations of sexual harassment—even if there is no charge filed—is not an invitation to a defamation suit when the information is true, when there is no intent to harm the employee, and the prospective employer has a "need to know" the information.[7]

7. See Kenneth L. Sovereign, "Labor Relations, Pitfalls of Withholding Reference Information," *Personnel Journal*, March 1990, pp. 119-121; and Terri L. Regotti, "Commentary, Negligent Hiring, and Retaining of Sexually Abusive Teachers," *Education Law Reporter*, May 21, 1992, pp. 333-340; and "Negligent Hiring," Office of Public Instruction, State Capitol, Helena, Montana 59620, nd.

**Dealing informally with complaints.**

Informal charges are much more common than formal complaints. Most victims of sexual harassment do not talk to someone in a formal position to help them. Of those that do talk to someone, most do not want to file formal charges.

Even if a formal complaint has been filed under Title VII or Title IX, it still may be useful for the institution to try to resolve it informally, with the consent of the complainant. In most instances, the victim wants to stop the harassment rather than seek a vindication of her rights. An apology from the offender, a reevaluation of a grade, allowing the victim to transfer if she desires, may be possible resolutions.

Requiring the parties to meet to work out a solution suggests that the problem is merely an interpersonal one rather than a violation of law. Such a requirement may have the unintended effect of driving the complainant into filing a formal charge with the government, since investigations and resolution by the Equal Employment Opportunity Commission (for employee complaints) and the Department of Education (for employee and student complaints) do not require the parties to meet, unless the case goes to court.

Some people have suggested mediation as a way to handle cases of sexual harassment.[8] Others have opposed it, pointing out that the parties are far from equal, that the harasser typically has greater verbal skills and experience in negotiating, and that mediation assumes a neutrality that is inappropriate when the law and campus regulations have been violated. But in situations where the victim wants to meet with the harasser to confront him with her feelings, it is helpful if the third party has mediation training, even though the meeting is technically not mediation.

What can institutions do when they know about sexual harassment and no one is willing to file a formal charge? The institution is in a bind. It may be liable if it does nothing, yet it cannot readily invoke its formal procedures without a formal charge. What are the institution's options?

**1. The institution can provide students and employees with techniques to handle it on their own if they are willing.** For example, in some instances, coaching a student to indicate to the harasser that she doesn't like the behavior and that she wants it to stop may end the behavior. This does not always work; some harassers continue even when given strong messages that their behavior is not welcome.

A more powerful technique is the use of a specially designed letter, developed by Mary Rowe at the Massachusetts Institute of Technology. The letter has been extraordinarily successful in many institutions; in approximately 90 percent of the cases, it stops the harassment of that particular person and may also prevent the future harassment of others.[9]

8. Howard Gadlin, Office of the Ombudsperson at the University of Massachusetts at Amherst, as quoted in "Academic and Workplace Sexual Harassment, A Resource Manual," pp. 58-60.

9. Conversations with Mary Rowe, numerous campus affirmative-action officers, presidents, and other administrators across the country.

The letter is polite, low-key, and detailed and consists of the following:[10]

- Part I is a factual account of what happened, without any evaluation, as viewed by the writer. It should include details, including time, place, and a description of the behavior(s). For example, "Last month when I came to your office you asked me to come to your apartment that night to discuss how to improve my grade." Often the harasser agrees with the facts, but not with the interpretation.
- Part II describes how the writer feels about what happened, such as misery, dismay, fear, revulsion. For example, "I'm frightened whenever you come near me," or "When you walk into the room, I want to throw up." As in Part I there are no evaluative words or accusations, only a description of how the writer feels.
- Part III describes what the writer wants to happen next. This part is usually short, since most people usually just want the harassment to stop. For example, "I want to be treated the way a student has a right to be treated," or "I don't want you to make sexual remarks about me again."

The letter is best delivered by certified mail with a return receipt requested. This insures that the harasser receives the letter. A copy is kept by the writer; should there be any subsequent retaliation or continued harassment, the letter can be used as evidence.

Copies are *not* sent to anyone else. A letter copied to the dean is likely to lead to the recipient's contacting the dean, denying the incident, and denigrating the writer's credibility. If the letter is to work, it must be a private communication between the two people involved. Because the letter gives the recipient an opportunity to read the letter several times without having to respond immediately, and because it is low-key and nonaccusatory, it provides the recipient, perhaps for the first time, with a view of how his behavior is viewed by someone else. Usually the recipient is astonished at how his behavior is perceived by the writer. He may also fear a formal charge and worry about who else has seen the letter, and thus be less likely to engage in retaliation such as bad grades or negative recommendations.

The letter is apparently more powerful than a verbal request to stop. Usually the recipient says nothing and simply stops the harassing. Should he want to talk about it, to defend or deny his behavior or apologize, the writer is advised to say that she is not going to discuss it, that she just wants the behavior to stop and then to walk away.

The letter has many advantages: it avoids formal charges and a public confrontation, keeps the incident confidential, and bypasses issues of legality, evidence, and due process. It usually works, except in the rare instance where the recipient is

10. See Mary P. Rowe, "Dealing with Sexual Harassment," *Harvard Business Review*, May-June 1981; Bernice R. Sandler, "Writing a Letter to the Sexual Harasser: Another Way of Dealing With the Problem," and Jean O. Hughes and Bernice R. Sandler, "In Case of Sexual Harassment: A Guide for Women Students," both available from the Center for Women Policy Studies, Washington, D.C.

extremely aggressive or sadistic. The letter is effective even if the writer had misinterpreted a friendly action as being sexual. Equally important, the letter helps the writer regain a sense of control. It must be voluntary, however, and follow-up with the writer is essential to determine if other action is needed. A number of schools have publicized the letter in materials dealing with sexual harassment.

**2. The institution can initiate activities to increase awareness of sexual harassment.** In some schools, especially when the victim does not want her name known, the dean or the president has sent a letter to every member of the particular department or unit, stating that there is concern about sexual harassment within that department or unit and that because of legal liabilities staff are invited (or required, if possible) to attend a workshop on sexual harassment.

**3. A supervisor or administrator can speak to the alleged harasser.** It is best to obtain the permission of the victim before doing this, unless the harassment is so severe, as in the case of sexual assault, as to merit this kind of intervention without permission. In many instances, a department chair or dean or other supervisor speaks to the alleged harasser (sometimes without naming the woman), noting that his behavior is being perceived as sexually harassing and reminding him that sexual harassment is prohibited by law and institutional policy.

He is also told that because there has been no formal charge, there will be no investigation. Whether the person admits or denies the charges is not important. If the person denies the harassment, the administrator can state that without an investigation it is not possible to know if the allegations are true or not and that what is important is how that person's behavior is being perceived.

The administrator should also note that no action is being taken other than to inform him of how his behavior is being perceived, that no record is being put in his personnel file but that the information would be available should there ever be a formal charge of sexual harassment. He is also reminded that the institution's policy also prohibits any retaliation.

The administrator who talks to the alleged harasser should write a confidential memo of the conversation for his or her own files to be used in the event that there are subsequent allegations of sexual harassment.

**4. The institution could bring its own charges against the alleged harasser.** Most institutions establish a neutral forum that hears formal charges of sexual harassment. Another alternative is for the institution to bring its own charges against the harasser, particularly in egregious cases and where victims would be willing to testify as witnesses, even though they might not be willing to bring charges on their own. Institutions can usually bring such third-party charges against employees and students when they violate certain institutional policies.

**Evidentiary standards for investigations.**

People investigating or making decisions about sexual harassment charges should be aware that the standard of evidence in investigations of sexual harassment is not

the one often seen on television: beyond a reasonable doubt. Although that is the standard for cases involving criminal penalties, the standard for administrative procedures, such as those occurring in universities and colleges, is different because the penalty is less severe than in a criminal case. The standard is that of "a preponderance of evidence"—that is, a reasonable person would assume that the events did or did not occur, given the preponderance of evidence.

Allowing information or testimony from "fresh complaint" witnesses—persons to whom the victim spoke immediately after the incident occurred—should be allowed. Statements about a person's character should not be part of the investigation or subsequent procedures.[11]

**False charges.**

When sexual harassment first became a campus issue, many people worried that women would bring false charges as a way to "get back" at someone they dislike. But it is very difficult to get people who have been harassed to bring charges at all, in part because they are fearful of the process and because they believe they may be blamed for the harassment. False charges are exceptionally rare, probably accounting for less than 1 percent of all charges.[12]

**Inclusion of lawyers in the hearing process.**

Some schools bar lawyers from all formal procedures, including hearings, reasoning that the presence of lawyers makes the process more adversarial. Other schools allow lawyers to participate in the process. A third possibility is to allow lawyers to be present but not to be part of the proceedings. Client and attorney may speak to each other at any time, but the lawyer is not allowed to participate in the hearing process in any manner. In any event, the policy should be clear about the role of lawyers.

**Freedom-of-speech issues.**

Freedom of speech has been raised in various contexts concerning harassment. Some faculty have claimed that any restraints on their behavior towards students, prompted by concerns about sexual harassment, are an infringement on their freedom of speech and academic freedom. Academic freedom, however, involves the free discussion of ideas and does not include asking students for sexual favors or intimidating them because of their gender. The free-speech issue has also been raised as institutions grapple with issues of student-to-student harassment, particularly racial harassment.

In June 1992, the U.S. Supreme Court ruled that hate crimes are free speech protected by the First Amendment of the Constitution. The court overturned a St.

11. "Report of the Date Rape Task Force, Harvard and Radcliffe Colleges," February 10, 1992, p. 25.
12. Catharine R. Stimpson, p. 117.

Paul, Minn., ordinance making it a crime to engage in speech or behavior likely to arouse "anger or alarm" on the basis of "race, color, creed, religion or gender." The case involved a white teenager who had burned a cross on the lawn of a black family's home.

Although impact of this ruling on campus speech codes is not yet clear, the ruling casts doubt on the constitutionality of such codes in public institutions. Private institutions generally are not required to follow constitutional standards. About 100 colleges and universities have such codes. While detailed discussion of this issue is beyond the scope of this paper, it is important to keep in mind that freedom of speech is not absolute and that courts have upheld some restraints on free speech.

The issue of a hostile environment in an educational setting as a constitutional issue has not yet reached the Supreme Court. One could speculate whether the court, which ruled in 1986 that a hostile environment based on gender *in a workplace* violates sex discrimination laws,[13] would rule that a similar hostile environment *in an educational setting* would *not* violate sex discrimination laws. The argument can be made that education institutions should be held to an even higher standard than employers.[14] It is unlikely that the courts would consider direct or indirect threats or bribes for unwanted sexual activity a free-speech issue. Whether speech that creates a hostile environment interfering with a person's ability to work or learn is seen as constitutionally protected may ultimately be decided by the Supreme Court.

Whether or not speech codes can be crafted in such a way as to be valid under the Supreme Court ruling, schools are not prohibited from dealing with offensive speech and behaviors in other ways, such as the following:[15]

- Other rules, such as prohibitions against vandalism, uncivil behavior, trespassing, littering, threatening behavior, intimidation, harassment, and the like can still be invoked. School regulations prohibiting these types of behaviors, as well as federal and state laws prohibiting discrimination, are not affected by the court's decision.
- In some instances where free-speech issues have arisen and institutions have been hesitant about invoking formal sanctions (as in some cases of student peer harassment), institutions have remained silent. Unfortunately, such silence can be construed as condoning the behavior. Institutions can still do much to help educate their community institutions by taking a public stand against the behavior. Two examples follow:

13. *Meritor v. Vinson*, 1986.
14. Ronna Greff Schneider, "Sexual Harassment and Higher Education," Elsa Kircher Cole, editor, *Sexual Harassment on Campus: A Legal Compendium*, National Association of College and University Attorneys, Washington, D.C. 1990, pp. 46-49.
15. Over 70 recommendations are described in "Peer Harassment: Hassles for Women on Campus," Center for Women Policy Studies, Washington, D.C.

- A Take Back the Night March held at Princeton University to call attention to sexual assault was disrupted by male students who shouted obscenities and harassed the marchers. Such disruptions are not unusual at these marches. What was unusual at Princeton was that a top administrator issued a strong statement condemning the behavior of the harassers. Working with the student organizers, he arranged for the march to be rescheduled for the following night. By showing support for those who organized the march, the administrator helped educate the Princeton community.
- At one campus, when a fraternity asked for permission to show "Deep Throat" as a fund-raiser, the dean of students felt he could not prohibit them from doing so because of free-speech issues. But in giving them permission, he also told them of his disapproval and that he planned to write an open letter to the student newspaper indicating this. His letter sparked many discussions on campus and supported those people who felt demeaned by the showing of the film.

- Create a positive atmosphere with policies that promote civility, respect, and tolerance.
- Develop programs to increase awareness and responsibility about these issues.

# CHAPTER 4
# *Response to Victims*

People who have been harassed often need to know that what has happened is not their fault; that sexual harassment violates the law and institutional policy; that they have a right to feel angry; and they that have several options in dealing with the behavior. They need to be informed about their legal rights, the institution's formal procedures, and informal ways of dealing with the problem. They also need to be reassured that the institution takes their complaint seriously and will do everything possible to protect them from retaliation.

Additionally, victims of sexual harassment, whether they file a formal charge or not, often feel helpless, ashamed, or worried, and may suffer stress-related symptoms. Letting victims know that they can obtain help is important, but it is equally important that the person giving help is familiar with sexual harassment and its impact and has specific training on how to deal with sexual harassment complaints.

Keeping the victim informed at all stages of the process, including any formal or informal action taken by the school, is essential. She should also be urged to report any further instances or retaliation. Provisions should be available, if needed, for having job evaluations redone or a grade reevaluated by a source other than the alleged harasser. When either the harasser or the victim transfers to another situation, it is important that steps be taken to ensure that the harasser understands why the transfer is happening so that he does not continue to harass.

Help should be available to facilitate an employee's transfer from a job to one of equal or better status or for a student's transfer or dropping of courses, without penalty, when the victim requests this. Tuition should be refunded when a student drops a class because of harassment. Should an employee or student wish to take a leave of absence, this should be facilitated without penalty. Providing funds for therapy, when needed, can help mitigate the aftermath of sexual harassment.

# CHAPTER 5
# *Educational and Preventive Measures*

No matter how comprehensive a policy is, educational programs are essential in helping to prevent sexual harassment. The first step in any educational program is dissemination of the policy. Following are some ways colleges and universities have ensured that all members of their institutions know about the policy.

- Reporting annually to the community about sexual harassment, although descriptions of incidents may be sanitized to protect privacy.
- Sending a letter from the president to all faculty and staff members.
- Creating a brochure, aimed at the academic community as a whole or at particular segments of it, that explains various aspects of sexual harassment such as definition, prohibitions, and what to do if one is harassed.
- Including information about sexual harassment in orientation for students, staff, and faculty.
- Printing the policy in the student newspaper at the start of the school year.
- Including the policy in student, faculty, and employee handbooks.
- Including information about sexual harassment in materials given to new employees and transfer students.
- Passing out bookmarks that define sexual harassment and list a resource to call for information.
- Creating and displaying posters on sexual harassment. Some institutions have held poster contests.
- Referring to the policy in student and faculty codes of conduct.

Many institutions have developed educational programs to sensitize members of the academic community. A number of films and videos have been developed for help in training. The following activities have been undertaken on many campuses:

- Establishing a permanent committee to monitor and make recommendations about sexual harassment. The committee should include representatives from different segments of the campus, such as students, staff, and faculty. People of color, women, and men should be represented. In some schools, the same committee is the panel for hearing sexual-harassment cases.
- Offering training programs about sexual harassment for the entire community together if the institution is small enough.

- Offering training separately for specific segments of the community, such as faculty, graduate assistants, staff, and specific departments or units.
- Requiring student leaders to attend workshops on peer harassment.
- Providing training for administrators, with emphasis on their responsibilities and how they should and should not handle complaints.
- Providing training for persons likely to be contacted by people with complaints about sexual harassment, such as resident assistants, mental-health and counseling personnel, student-health personnel, women's center staff, student-life personnel.
- Providing training for those with specific responsibility for addressing sexual-harassment issues, such as a sexual-harassment committee or persons involved in hearing complaints.
- Developing training and special materials for faculty members from other countries. Some of these faculty, including graduate assistants, have very different ideas about what constitutes acceptable behavior toward women, especially women who are alone. And others may not be aware of U.S. law.[1]
- Including information about sexual harassment in other related programs, such as faculty-development training and training of graduate assistants.
- Training students to be peer educators.
- Involving men in conducting training activities. If there are no qualified men, have men introduce the trainers.
- Documenting the seriousness and extent of the problem through surveys of students, staff, and faculty members, campuswide conferences, and presentations.
- Evaluating fraternity life for evidence of peer harassment.
- Including items about sexual harassment and sexist remarks in teaching-evaluation questionnaires.

Sexual harassment is a public issue, not a private one. As such, it needs a public solution. By developing sound policies and procedures, boards of trustees can ensure that their institutions are dealing with this issue effectively.

1. SUNY-Binghamton has developed materials concerning sexual harassment for international students.

# PART II.
# DATE RAPE

# CHAPTER 6
# *What Is Date Rape?*

John and Susan are in the same biology class. A few days before the midterm, the professor urges students to study together. John asks Susan if she wants to study with him, and she agrees. John suggests that they meet in his room because he has several of the library readings as well as some material in his computer that could be helpful to them.

They study for a while and then take a break. John begins to kiss Susan. At first she is responsive, but as the intensity increases and he begins to touch her below the waist, she tries to pull away and says "No." John believes that Susan says "No" because she doesn't want to appear too easy. Despite her continuing protests, he persists. After a while she stops protesting because she is frightened and worried that he will hurt her.

For John, nothing unusual has happened. He has convinced Susan to have sex with him. For Susan, the experience was a nightmare. She was raped.

Like sexual harassment, rape has long been a hidden issue on campuses, becoming a high-profile and highly charged issue in recent years. Our traditional view of rape is usually that of a stranger jumping out of bush in a dark alley and assaulting a woman. Yet for more than half of women who are raped, the rapist is not a stranger but someone they know.[1]

The terms "acquaintance rape" and "date rape" (often used interchangeably) are not legal terms but are used to differentiate a rape by a stranger from a rape by someone known to the victim. Although the legal definition of rape varies from state to state, it is generally defined as sexual intercourse without consent and against the will of the person through force or threat of force. Some states also include in the definition penetration of any body orifice by a body part or object, as well as situations in which a person is unable to give informed consent, for example, someone who is mentally retarded or intoxicated.

Sexual assault generally is defined as attempted or actual unwanted sexual activity, including sexual touching or fondling. The terms "sexual assault" and "rape" are used interchangeably here because the policy issues are similar. Sexual misconduct may also include other serious or persistent unwanted sexual contact or conduct, such as harassment, threats, intimidation, or unwanted touching or fondling.

1. In a study by the National Center for the Prevention and Control of Rape, 92 percent of adolescent rape victims said they were acquainted with their attackers. Reported in *Newsweek*, April 9, 1984.

### *How Often Does Date Rape Occur?*

- About 6,000 campus rapes are reported each year. Approximately 90 percent to 95 percent of campus rapes are unreported.[2]
- One in three women at Stanford University reported having had full sexual activity when they did not want to.[3]
- At the University of Oregon, one rape was officially reported to campus security during the 1990-91 year. During one *month* that year, 15 students reported rapes to the local crisis line.[4]
- A study at Bentley College in Massachusetts found that in a one-year period, women reported having experienced 569 incidents of sexual assault, including unwanted sexual contact, sexual coercion, attempted rape, and rape. Many of the women reported having experienced more than one attack. Men reported having committed 241 such acts.[5]

Date rape occurs on virtually all campuses, small or large, public or private, rural or urban, secular or religiously affiliated. College women are especially vulnerable, as women 18 to 24 years-old are the majority of rape victims nationwide.[6]

Such rapes are vastly underreported. Studies conducted at several campuses have documented how often sexual assault occurs: 15 percent to 25 percent of undergraduate women typically report that they have been forced to have intercourse with someone they knew when they did not want to.[7] A 1985 national study of college students found that one in four women students had an experience that fit the legal definition of rape or attempted rape. Eighty-four percent knew their attacker, but only 57 percent of the women who had been raped labeled their experience as rape.[8]

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2. Statistics are from the National Victim Center, *USA Today*, and the U.S. Department of Justice as reported in *The Sunday Oregonian*, November 24, 1991.
3. "Final Report of the Task Force on Sexual Assault," Stanford University, November 1980, p. 2.
4. *The Sunday Oregonian*, November 24, 1991.
5. *On Campus With Women*, Vol. 20, No. 2, Fall 1990, p. 7.
6. Laurie Bechhofer and Andrea Parrot, "What is Acquaintance Rape?" in Parrot and Bechhofer, editors, *Acquaintance Rape: The Hidden Crime*, N.Y.: John Wiley & Sons, Inc., 1991, p. 20.
7. For example, 25 percent of undergraduate women surveyed at Auburn University in Alabama in 1982 reported at least one instance of forced intercourse, and 93 percent of these incidents involved acquaintances. A 1982 study at St. Cloud University in Minnesota reported that 29 percent of the women surveyed reported being physically or psychologically forced to have intercourse. A 1984 study at Brown University reported that 16 percent of the women who were surveyed reported that they had been raped by an acquaintance. Reported in Robin Warshaw, *I Never Called It Rape, The Ms. Report on Recognizing, Fighting and Surviving Date and Acquaintance Rape*. N.Y.: Harper & Row, 1988, p. 13-14. In 1989 the Rape Treatment Center at Santa Monica Hospital in California reported that one out of six college women is sexually assaulted each year.
8. As reported in "'Friends' Raping Friends: Could it Happen to You?" Jean O'Gorman Hughes and Bernice R. Sandler. Published by the Association of American Colleges, Project on the Status and Education of Women, 1987; reprinted by the Center for Women Policy Studies, Washington, D.C., 1991.

One in twelve men admitted to having forced or tried to force a woman to have intercourse through physical force or coercion; that is, these men admitted to having raped or attempted to rape a woman. Virtually none of the men, however, identified themselves as rapists. Unlike other crimes, when rape occurs, it may not be clear to the victim or the perpetrator that a crime has been committed, even though considerable physical and emotional harm may have been done.

Gang rape, when several men rape the same woman, is another form of acquaintance rape reported on many campuses. Most often associated with fraternities or athletic teams, gang rape has rarely been researched. The Center for Women Policy Studies has about 150 documented incidents in its files, and approximately a dozen or so are reported in the press each year. The actual number is thought to be much higher since gang rapes are even less likely to be reported than one-on-one rapes.[9] Gang rapes have been reported at institutions such as St. John's University, the University of California at Berkeley, Temple University, the University of Florida, and the University of Rochester. Using data from a survey of more than 2,000 students from 51 Virginia institutions, the Virginia State Council on Higher Education estimated that 172 gang rapes occurred on Virginia campuses during the 1990-91 academic year.[10]

The typical campus gang-rape scenario involves a fraternity party. In many cases, but by no means all, a young woman at the party has had too much to drink and/or too many drugs. Therefore, she may be unaware that the "friendly" persuasion of the brothers is actually a planned pursuit of easy prey. By the time she recognizes her predicament, her confusion has changed to fear and panic, and escape seems impossible. She is unable to protest, or her protests are ignored. Anywhere from two to eleven or more men rape her.[11]

### *How Do Date Rapes Happen?*

Date rape typically occurs when a woman and man are alone, although others can be nearby. Rapes have occurred, for example, in upstairs bedrooms while people were attending a party downstairs. Men's and women's perceptions of what has happened in an date-rape situation are often vastly different. As in sexual- harassment incidents, men often say that the woman "asked for it"—usually meaning that her appearance and or her behavior was such that the victim "deserved" to be raped.

9. One of the few statistics concerning gang rapes comes from Connecticut where rape-crisis centers kept data from July 1, 1990 to June 30, 1991 and reported 106 gang rapes. *New Haven Register*, October 6, 1991.

10. *Sexual Assault on Virginia's Campuses*. Report of the State Council of Higher Education and the Task Force on Campus Rape to the Governor and the General Assembly of Virginia, Senate Document, No. 17, 1992, Revised Table 3.

11. Julie K. Ehrhart and Bernice R. Sandler, "Campus Gang Rape: Party Games?" p. 2. Published by the Association of American Colleges, Project on the Status and Education of Women, 1985; reprinted by the Center for Women Policy Studies, Washington, D.C., 1992.

## SOME REASONS FOR RAPE

Like sexual harassment, rape is a display of power and control. A typical rape often involves many elements, such as socialization and stereotypes, misperception of the woman's wishes, and changing social mores. However, the major reason for acquaintance rape is a lack of consideration for a woman's rights and wishes. She is viewed as if all or some of the following were true: her wishes are immaterial; her behavior is such that she deserves to be raped; her "No" is not genuine; and she is there for the man's exploitation.

Many stereotypes in our society help create the potential for rape. Men are generally socialized to be dominant and, at an early age, to be aggressors. They are encouraged to have strong sexual feelings closely linked to their feelings of masculinity and power. Women are often stereotyped as passive and submissive.

Misperceptions are common. A woman's "No" is heard as a "Maybe" or "Yes." A woman's friendliness can be misinterpreted as a sexual invitation, as can her clothing. A man may feel that because he has had sex with a woman previously, he is entitled to have sex with her again, or that if she has been sexually active, he is entitled to have sex with her, too. Sometimes a man may feel that because he has spent money on a date he is entitled to have sex. The woman's wishes are not considered.

Increasingly, those who study the phenomenon of rape are concluding that rape is not a crime of passion or the result of miscommunication or alcohol and drugs.[12] It is, instead, an attempt to assert power and an expression of anger. It strikes at the heart of a personal relationship between a man and a woman, how they treat each other, and how they respect each other's wishes. People who respect others do not coerce them.

When the victim is seen as having caused her own rape, the locus of responsibility shifts from the perpetrator to the victim, who is no longer seen as worthy of compassion or sympathy. The man is seen as an innocent victim of circumstances. After all, "boys will be boys." In some instances, the past sexual history of the woman is brought up as justification for a rape, as though a woman who has been sexually active is "fair game" and therefore not entitled to the protection of the laws prohibiting rape.

Alcohol and drugs are often a factor in rape. Both may lessen a man's inhibitions so that he becomes less concerned about the woman's wishes or welfare. They may also help him rationalize or excuse his own abusive behavior. Similarly, alcohol and drugs can cloud a woman's judgment and weaken her ability to take effective steps to protect herself. A woman's use of alcohol or drugs, however, may implicate her in the eyes of others, so that she is viewed as responsible for her own victimization. She is held accountable for what happened to her even though she was participating in the *same* drinking behavior as the man.

12. See, for example, Susan Estrich, *Real Rape*. Cambridge: Harvard University Press, 1987, and Andrea Parrot and Laurie Bechhofer, editors, *Acquaintance Rape: The Hidden Crime*. N.Y.: John Wiley & Sons, Inc. 1991.

The premeditated use of alcohol or drugs to impair a woman's ability to protect herself is not uncommon, particularly at parties. Spiked drinks may be served, and a potential victim may be encouraged or even forced to drink more than she would have otherwise.

Men can drink with their friends and not worry about being taken advantage of. They are not victimized by their friends and peers—they are not raped, sodomized, or otherwise violated. Women who drink do not have that luxury. If a woman becomes drunk, men have several options: they can ignore her, they can help her, or they can exploit her. And too often, they choose to take advantage of the woman.

Fraternities and athletes are more likely to be involved in acquaintance rapes than other students. At the University of Illinois, 63 percent of assaults were committed by fraternity members, although they represent only a quarter of the student population.[13] In a statewide study of students on Virginia campuses, 45 percent of male students who coerced women into having sex were members of a fraternity, athletic team, or campus military organization.[14] The all-male composition of fraternities and athletic teams often leads to an overemphasis on stereotyped masculine values and behaviors, including the belief that violence and dominance are "manly."[15] Peer harassment, especially prevalent in fraternity rituals and some athletic team behaviors, may set the stage for rape. [For more information on the effect of alcohol on this problem, see the companion volume in this series, *Alcohol and Drug Abuse*, by Thomas G. Goodale.]

### *The Impact of Campus Rape*

The effects of campus rape are wide ranging, affecting all members of the institutional community, potential students, and the surrounding community.

*Impact on women.* Sexual assault is a profoundly traumatic ordeal, experienced as a severe emotional and physical violation. Although many women will respond differently, common reactions are shock and denial or disbelief, intense fear about personal safety, feelings of helplessness and lack of control, shame and guilt, depression, anxiety, inability to concentrate, mood swings, anger, concern about the reactions of family and friends, and difficulty in handling schoolwork. These behaviors are typical of post-traumatic stress disorder.[16]

Physical symptoms may also be present, particularly those related to stress, such as headaches, backaches, and the inability to sleep. Women are also legitimately

13. Kathleen Hirsch, "Fraternities of Fear," Ms., October 1990.
14. *Sexual Assault on Virginia's Campuses*, p. 20.
15. See *Fraternity Gang Rape: Sex, Brotherhood, and Privilege on Campus*, by Peggy Reeves Sanday, N.Y.: Columbia University Press, 1990.
16. See, for example, Christine A. Gidycz and Mary P. Koss, "The Effects of Acquaintance Rape on the Female Victim," in Andrea Parrot and Laurie Bechhofer, *Acquaintance Rape: The Hidden Crime*, pp. 270-283.

fearful of venereal disease, HIV infection, and pregnancy. Acquaintance rape can undermine a woman's trust in others because the rapist was someone she trusted. Her confidence in her own judgment of other people is diminished.

Campus personnel to whom she might talk about the rape may also blame her for what happened. In some instances, if she reports the incident, she may be harassed by the rapist and his friends. Women students may also blame the victim. Many young people believe that bad things only happen to bad or stupid people. By portraying the victim as bad ("She sleeps around" or "She drinks too much") or as stupid ("She never should have gone to that party" or "What was she doing out that late, anyway?"), women can deny that rape is commonplace and that they too may be at risk. Thus, they maintain a view of the world in which they are safe from rape

**MYTHS ABOUT RAPE**

*Myth: Rape couldn't happen at a school like ours.*

Fact: No school can claim to be exempt. Since most campus rapes are not reported, an absence of complaints does not mean that no rapes have occurred. A campus that does not consider rape a relevant issue does a disservice to its students; it makes rape survivors feel more isolated and guilty, puts women on campus at greater risk, and encourages men to think rape is acceptable behavior.

*Myth: Women often lie about rape to get back at someone or cover up their own sexual activity.*

Fact: False reports are very uncommon and occur at the same rate (1 percent to 2 percent) as false reports for other major crimes. The fact that many cases are dropped because of insufficient evidence for conviction should not be confused with false reporting. This myth makes it difficult for people to believe women who report that they have been raped and accounts, in part, for the low rate of reporting: women fear that they will not be believed.

*Myth: Women who don't protest vigorously probably weren't "really" raped.*

Fact: Although some women can escape a rape by protesting, other women who protest either verbally or physically have had their protests ignored. In some rapes, the victim is threatened with physical harm or death, so she does not protest. The physical size and strength of a man's body is often intimidating to a woman, and she may fear injury if she resists. Some women stop resisting because of fear; indeed, they may be so immobilized by fear that they may not be able to think about escape.

*Myth: A woman can't be raped if she really does not want to have sex. If a woman is raped she must have wanted it.*

Fact: Fear of death or injury can immobilize anyone. There is no physical reason that prevents a nonconsenting woman from being raped.

*Myth: There wouldn't be so many rapes if women would stop wearing sexy clothing and acting provocatively.*

because they are neither bad nor stupid. Interracial rapes, though rare, may elicit charges of both racism and sexism, particularly if the rape involved a group, such as a fraternity whose members are predominately one race.

Campus rape also affects women on campus who have not been raped. Young women are vulnerable and need some guidance—not to prevent rape because they are not doing the raping—but to avoid situations that might lead to acquaintance

17. C.L. Muehlenhard and L.C. Hollabaugh, "Do Women Sometimes Say No When They Mean Yes? The Prevalence and Correlates of Women's Token Resistance to Sex." *Journal of Personality and Social Psychology*, Vol. 54, No. 5, 1988, pp. 872-879.
18. Rochel Grossman, editor, with Joan Sutherland, "Surviving Sexual Assault." Los Angeles Commission on Assaults Against Women, N.Y.: St. Martin's Press, 1983, p. 3.

Fact: Provocation is in the perception of the offender. What a woman wears does not give anyone permission to violate her. The attractiveness of victims and what they wear is far less important than their perceived vulnerability. No person asks to be hurt or degraded, just as no one asks to be robbed because they have money in their pocket. No woman—whatever her behavior—"deserves" or "asks" to be raped. This myth shifts the blame from the perpetrator to the victim. The victim's appearance and behavior do not absolve the perpetrator of responsibility.

*Myth: Men can't control their sexuality.*

Fact: Men can and do control their sexual behavior. Men see attractive women every day, and most do not rape women as a result. This myth, like the preceding one, blames the victim by making her responsible for the perpetrator's behavior.

*Myth: Most women say "No" when they really mean "Yes."*

Fact: In one study, although 39 percent of women had said "No" at least once when they really meant "Yes," the majority had only done it once.[17] Most women mean "No" when they say it.

*Myth: Most rapes are interracial.*

Fact: The overwhelming majority of rapes—90 percent—involve persons of the same race or ethnicity.[18] The stereotype of a black male raping a white woman is just that—a stereotype.

*Myth: Rapists are perverts.*

Fact: Most campus rapists are normal and show no signs of personality disorder. The myth is often used to underlie a rape defense: a "nice guy" like the accused could not possibly be a rapist.

*Myth: Rape is a crime of passion and sex.*

Fact: Sexual assault is a crime of intimidation and violence. It is *not* the result of uncontrollable sexual urges set off by a woman's appearance or behavior. The rapist is expressing not his sexual need, but rather his need to feel powerful, to dominate, and to control a woman.

rape. Publicized accounts or rumors about campus rape, especially when there is no policy or educational program, may demoralize and frighten women.

*Impact on men.* If campus rape is ignored or denied, some men who have raped women or who might do so will continue to believe that this behavior is acceptable. Because they typically do not consider such behavior rape or forced sex, they continue behavior that puts them at risk for criminal and institutional charges, civil charges, and adverse publicity about their character and behavior.

As the number of reported cases rises, the risk for men involved in campus rape increases. Several men have gone to jail or prison as a result of convictions. Some athletes have been suspended or removed from their teams, and some fraternities have also been suspended or banned from campus.

*Impact on the institution.* Untrained faculty and staff, particularly those dealing formally or informally with survivors and offenders, may not know how to respond. They may not know where to refer a victim or how to deal with an offender. By not dealing with rape adequately, they do a disservice to students and at the same time may leave the institution vulnerable to a lawsuit as well as to unfavorable publicity.

Bad publicity has often focused on how an institution handled or mishandled an investigation or bypassed a disciplinary procedure, as in the case of the president and dean of the University of South Florida who were roundly criticized by the state board of regents, state legislators, and the state's education commissioner for poor handling of rape charges.[19]

Students may hold public demonstrations and other activities denouncing their institution if they do not believe their school is dealing fairly with this issue. For example, students at Wesleyan University in Connecticut interrupted tours of prospective students and their parents to discuss the problem of sexual assault and performed "guerilla theater" in the admissions office, thus discouraging some students from applying.[20]

Rape is an emotionally charged issue, capable of polarizing the entire community. Some people will defend the victim and others the perpetrator, and virtually all will do so with passion. It is not unusual for an institution to be criticized by some for being too lenient with the offender and by others for being too heavy-handed. Such disparities indicate a lack of consensus around the issue of rape and speak loudly of the need for educational programs, clear institutional policies, and vigorous enforcement.

19. *About Women on Campus*, Vol. 1, No. 3, Summer 1992.
20. *On Campus With Women*, Vol. 16, No. 4, Spring 1987, p. 7.

# CHAPTER 7
# *Legal Implications*

■ Four women students sued Carleton College in Minnesota charging that it was negligent in the way it handled their complaints of sexual assault. The women charged that the college knew of previous assaults by the male students who assaulted them and that it had failed to take proper action. They also stated that the hearing process was unnecessarily intrusive and that the penalties imposed on the male students (disciplinary probation and suspension) were insufficient, given the serious nature of the charges. The suit was settled out of court.[1]

*State laws.* Laws prohibiting rape, sexual assault, and sexual abuse vary from state to state. Although most rapes will not be reported at all, for reasons mentioned earlier, women are more likely to report rapes to their institution than to the local police, although some will do both. State laws may also require specific actions on the part of institutions, such as providing information to students about the incidence of rape, development of policies and educational programs, and reporting requirements.

*Title IX of the Education Amendments of 1972.* Title IX prohibits sex discrimination in all institutions receiving federal assistance. Virtually all institutions are covered, as is the entire institution, regardless of which programs receive the federal funds. Sexual assault is the extreme form of sexual harassment and, as such, is covered. To the extent that an institution responds to other disciplinary problems but not to charges of sexual assault, it might be liable to charges of sex discrimination, because crimes against women were handled in a discriminatory manner. Having a separate policy for rape and sexual assault would not violate Title IX but would be seen as being responsive to problems primarily faced by women.[2]

*State antidiscrimination laws.* In some instances, state laws that prohibit sex discrimination in education may be invoked, based on the rationale described under Title IX.

*Civil laws.* Civil suits have been successfully filed against education institutions where rapes occurred. Recently, a jury ordered the University of Southern California

1. *About Women on Campus.* Vol. 1, No. 2, Spring 1992, p. 7.
2. Title IX allows activities and services such as gynecological care even though these benefits or services may be used exclusively or primarily by women. The same reasoning would apply to policies and services concerning sexual assault.

to pay more than $1.6 million in compensatory damages to a former student who was raped in an off-campus residence hall.[3] Although this particular suit involved a rape by a stranger, the issues are similar to those in acquaintance rape. Third-party liability suits put the institution in the same category as apartment houses, hotels, and the like that have a duty to provide a safe environment.

Victims may be able to sue the institution for personal injury and seek compensation for a full range of damages, including pain and suffering.[4] Questions about whether the incident was forseeable, as well as whether the institution warned students about known dangers, are issues courts examine in deciding whether institutions are negligible. The high incidence of acquaintance rape, coupled with the failure of institutions to publicize the danger, develop educational and prevention programs, and provide a safe environment can leave schools vulnerable to lawsuits.[5]

*Special Problems With Fraternities.* When rapes occur in fraternity houses or during fraternity-sponsored activities, fraternities may also be liable to civil suits. The rapist(s), house president, and party organizers might be held legally responsible for the actions of rapists on premises by allowing a party to get out of control and thereby not providing a safe environment. The victim may be able to sue the chapter, the national organization, and the school itself, depending upon the circumstances.[6]

To the extent that institutions provide official recognition and institutional support of fraternities and allow them to operate on school property, institutions may incur liability for their actions, and in some instances both the school and the fraternity have faced lawsuits concerning sexual assaults.[7] While total protection against liability may not be possible, institutions may reduce the possibility by activities such as the following:[8]

- Regulating fraternity and sorority activities by developing rules for alcohol use and time limits on parties.
- Sending a letter or brochure from the president or dean of students to all fraternity and sorority officials at the beginning of each year, describing the regulations to be followed, and informing them that they will be responsible for violations and any other illegal behavior at their parties.

3. *Chronicle of Higher Education*, April 1, 1992.

4. Students may also sue the perpetrator under civil theories of assault and battery or other intentional torts (civil wrongs) such as intentional infliction of emotional distress, as well as compensation for the harm done.

5. Aileen Adams and Gail Abarbanel, "Sexual Assault on Campus: What Colleges Can Do," Rape Treatment Center, Santa Monica Hospital, Santa Monica, Calif. p. 15.

6. "Campus Gang Rape: Party Games?" p. 9.

7. For example, in 1987 a student at San Diego State University, who charged she was gang raped at a fraternity party, filed suit against the university, the fraternity, the sorority that cosponsored the party, and 100 unidentified individuals allegedly involved in the incident.

8. "Campus Gang Rape: Party Games?" p. 12.

- Requiring that fraternity and sorority organizations hold liability insurance. Should the institution then be sued, it may be able to recover money from the organization.
- Requiring that fraternities and sororities develop training programs on sexual assault for their members.
- Warning *all* students about the risks of acquaintance and gang rape at parties. Use orientation and student manuals to do this. Just as students are often warned about avoiding dangerous sections of town, institutions should similarly warn students about the problems that might arise at parties.

Additional suggestions are described in Chapter 9.

*Federal reporting requirements.*[9] Title II of the 1990 Student Right-to-Know and Campus Security Act requires any institution receiving Title IV student aid to prepare and distribute an annual report describing its policies on crime prevention and giving statistics on specific crimes that have occurred on campus, as well as the number of arrests on campus for liquor-law and drug-abuse violations and weapons possessions. Rape is one of the crimes to be reported.

Campuses must make these reports in a timely manner. In most instances, fraternity and sorority housing is considered part of the campus, regardless of location or ownership. Similarly, recreation sites, off-campus research facilities, campuses in other countries, and other off-campus facilities are included.

The first report was to have been published and distributed by September 1, 1992. Institutions must publish and distribute these annual reports through publications or mailings to all current students and employees; copies also must be provided to any applicant for admission or employment upon request, and a copy of the report must be submitted, upon request, to the U.S. secretary of education.

Additionally, when any of six crimes (murder, rape, robbery, aggravated assault, burglary, and motor vehicle theft) that are a threat to other students and employees are reported to campus security or a local law-enforcement agency, institutions must provide timely warnings to the campus community. [For additional information, see *Crime on Campus*, by Philip Burling, a companion volume in this series.]

The Higher Education Reauthorization Act of 1992 requires campuses that participate in any of its programs, such as student financial aid, to develop and distribute a statement of policy regarding the institution's sexual assault programs aimed at the prevention of sexual offenses and the procedures followed once a sexual offense has occurred.

9. For an excellent summary, see "Complying with the Campus Security Act—1990, Title II—Crime Awareness and Campus Security," prepared by the National Association of Student Personnel Administrators, Inc., Washington, D.C., nd.

The policy must address the following areas:

- Education programs to promote the awareness of rape, date rape, and other sex offenses.
- Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, date rape, or other sex offenses, forcible or nonforcible.
- Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.
- Procedures for on-campus disciplinary action in cases of alleged sexual assault should include a clear statement that the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding and a clear statement that both the accuser and accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.
- Informing students of their options to notify proper law-enforcement authorities, including campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.
- Notification to students of existing counseling, mental health, or student services for victims of sexual assault, both on campus and in the community.
- Notification to students of options for and available assistance in changing academic and living situations subsequent to an alleged sexual assault incident, if requested by the victim and if they are reasonably available.

The requirements are effective July 1, 1993.

# CHAPTER 8
# *The Board's Response: Policy Issues*

Apart from their legal responsibilities, trustees want to provide a safe environment for their students. A strong program can help to accomplish this and should include the following components:

- A specific policy prohibiting rape and other forms of sexual abuse, including a description of complaint and judicial procedures.
- Development and implementation of an ongoing educational and preventive program.
- A description of services for victims.
- Policies and procedures that ensure a cooperative relationship with law-enforcement agencies and the courts.

## *What Are the Elements of a Good Policy?*[1]

A good campus policy on sexual assault should contain the following elements.

■ **A clear definition of rape, acquaintance rape, and other forms of sexual assault.** Although sexual assault is, in some instances, an extreme form of sexual harassment, institutions should develop separate policies for sexual assault of students *by students* different from the procedures used when students or employees are assaulted by faculty or supervisors as part of a larger picture of sexual harassment. Students assaulted by faculty or supervisors have been injured by agents of the institution; the procedures used should be different from those employed when students are assaulted by other students. Additionally, assaults by faculty or supervisors are relatively rare; assaults by students are far more common.

The policy prohibiting sexual assault should be broad enough to cover unwanted sexual activity as well as rape. There will be some overlap with the sexual-harassment policy in that both will prohibit unwanted sexual acts such as touching, fondling, and undressing a woman. The context of such acts may vary, however. For example, a student who has her clothes torn off by a date is not likely to consider the offense as sexual harassment. A student whose buttocks are continually pinched by a classmate who makes sexual jokes as he does it may not consider it sexual assault but sexual harassment. Because of this overlap, it is helpful if sexual-assault policies prohibit unwanted sexual activity as well as rape, and allow students to chose the appropriate procedure that best fits their perception of these acts.

1. These recommendations come primarily from "Sexual Assault on Campus," pp. 17-40.

■ **Same-gender assault, though rare, should be covered as should campus visitors who are assaulted by students.**[2]

■ **Off-campus violations should be covered.** Most people agree that violations by students at campus-sponsored events or facilities should be covered by institutional policies. The issue often arises with behavior in off-campus fraternity houses. Although some institutions have claimed that they have no jurisdiction over such off-campus activities, it is difficult to justify such a stance when the institution gives recognition and provides services, such as advisers, to off-campus organizations, thus leaving the institution open to liability claims.

More complicated is the issue of campus rape by students occurring in off-campus situations where there is no nexus with the institution, as at a private party or in someone's living quarters. Some people believe that if a student rapes another student or nonstudent off campus, it is a police matter and that the institution should not intervene. However, if a rape is reported to the campus and the school did nothing, the school would likely be liable if another student is then raped by the same person either on or off campus. Moreover, such a "hands off" stance leaves assault victims with little recourse except the police, and for the vast majority of victims who do not want to engage in criminal prosecution there would be no recourse. Institutions cannot ignore bad behavior on the part of students off campus. They have a right and responsibility to require students to follow a code of behavior wherever they are. Usually some off-campus violations are covered by the student code, and rape and sexual assault should follow the same principle.[3]

■ **Data about the incidence of rape on campus and information about how it occurs.** This, along with the definitions, is important because many students are simply unaware of what acquaintance rape is and its extent.

■ **A description of the state criminal statutes defining and setting forth punishments for rape and sexual assault.** Many students are unaware that their behavior may be illegal. Male students are often shocked to find out that having sex with an intoxicated partner in most states can make them vulnerable to subsequent charges of rape.

■ **Specific provisions of the student code of conduct that prohibit rape and sexual assault.** When one woman tried to press charges of rape on her campus, the most serious violation that the student could be charged with was disrespect to another student.

■ **A description of institutional procedures that are distinct from criminal procedures.** Women are often reluctant to file criminal charges, and prosecutors may not want to go forward with a difficult case. Institutional procedures should allow

2. Some campuses have worked out reciprocal agreements with other institutions concerning inter-campus rapes. Often these are part of a larger agreement covering a range of behaviors.

3. Some student codes cover off-campus violations affecting health and safety, which would include sexual assault.

institutional action whether or not the victim files criminal charges or charges within the institution.

The policy should allow for both criminal and institutional charges to proceed independently, so that institutional procedures and sanctions can be implemented when criminal charges are initiated.[4] Even if a case is criminally prosecuted, it may be years before it is finally adjudicated. A campus procedure that could not be implemented until legal proceedings are completed offers no protection to the members of the campus community during the time the case proceeds through the court system. Both parties might well have graduated by that time, making sanctions irrelevant.[5] The institution has a responsibility to its own community and the victim when the institution's code of behavior or its regulations are violated.

However, when both criminal and institutional charges are pending, the question may arise as to whether evidence given at an institutional proceeding is admissible in the criminal proceeding. Generally, if the accused student's testimony is voluntary—not forced under penalty of expulsion, for example—the testimony is usually admissible in a later criminal proceeding. Conversely, if the testimony is not voluntary, it is not admissible.[6] For this reason, one report suggests that campus policy be clear about whether guilt will be inferred from an accused's refusal to testify because of pending criminal charges.[7]

A major reason for keeping institutional actions separate is that the student judicial system is not an alternative *legal* system, but a different one with different goals, values, and procedures. Institutions, for example, can require higher standards of conduct. Additionally, the standard of proof for criminal charges is stricter than that for administrative hearings, so that it may be easier to prove wrongdoing under campus procedures than in a criminal court of law. Under criminal proceedings where one's liberty could be lost, the standard of proof is "beyond any reasonable doubt"; under civil and administrative procedures, such as an institutional hearing where the penalty is less severe, the standard should be that of "preponderance of evidence"—i.e., a reasonable person would assume that the events did or did not occur, given the preponderance of evidence.

In some institutions, when a police report has been filed and the school begins its own investigation, a student accused of rape can be expelled as a danger to the community even prior to a criminal trial. In this instance, using the less strict standard of evidence allows the institution to move forward and protect the institution, independent of any criminal proceedings. Even in cases where a police report has been filled but charges dropped because of insufficient evidence to obtain a conviction, the institution can still take action. In the case of St. John's University in

4. "Campus Gang Rape: Party Games?" p. 11.
5. "Sexual Assault on Virginia's Campuses," p. 41.
6. Ibid. p. 41
7. Ibid. p. 41

New York, the president expelled three defendants in a gang rape case who were acquitted of criminal charges. He stated that they had "flagrantly" violated the school's student behavior code "which includes respect for the dignity and worth of each individual."[8]

■ **A list of possible administrative and criminal penalties.** More than one penalty may be invoked. Administrative penalties might include the following:[9]

- Immediate expulsion.
- Suspension or probation for a specified time.
- Counseling, including group counseling where appropriate, to better understand the nature of the transgression and its consequences for both the victim and assailant. Counseling should rarely, if ever, be the only penalty invoked.
- Denial of campus housing.
- Prohibiting participation in extracurricular activities, including sports.
- Requiring the offender to inform his parents.
- Placing a letter in the perpetrator's permanent file.[10]
- Requiring relevant community service, such as participation in date-rape presentations.
- Requiring a letter of apology to the victim.

Additional group sanctions should be listed for fraternities, sororities, and other campus organizations, such as:

- Disbanding of the chapter.
- Probation or suspension for a specified time.
- Loss of campus housing.
- Prohibiting all social activities, including parties and participation in sorority socials, Greek Week, ski trips, homecoming, and so forth, for a specified time.
- Prohibiting service projects for a specified time.
- Suspending intramural activities, including both fraternity and independent league play.

8. "Guilty Plea in St. John's Case," in *About Women on Campus*, Volume 1, Number 2, Spring 1992, p. 7.

9. "Campus Gang Rape: Party Games?" p. 11.

10. At one college the sanction was written as follows:

> . . . have a letter written by [dean] about these matters entered in their permanent record, to be transmitted to any college, graduate school, professional school, or employer, with any transcript or recommendation requested. Upon a sufficient showing of growth and development in coming to terms with the issues involved, [dean] would expect to destroy the letters. The College has an obligation to help its students with educational and vocational placement, but it also has obligations to those who ask for recommendations or educational records. (Should a student select separation [from the college] we will not send the letter but would respond honestly to inquiries.) "Campus Gang Rape: Party Games?" p. 11.

- Prohibiting pledges and members at the time of the incident from holding office in the chapter, in student government, or any other campus positions of leadership or status.
- Prohibiting alcohol at fraternity events for a specified time.
- Restricting female guests to the downstairs area of the fraternity during social functions.
- Requiring every fraternity to develop and record its official position on sexual violence and its own guidelines to ensure that the policy will be enforced.[11]

■ **A statement that alcohol or drug use will not be a defense against a charge of rape or sexual assault.** Use of these substances does not diminish personal responsibility under law for one's own actions.

■ **A statement prohibiting harassment of victims by the assailant or others.** When a rape case is well publicized on campus or when victims have filed charges, most of them will leave their institution, often within days of the assault. Those victims that do stay are often harassed by their assailant and his friends, particularly if the victim has filed charges.

■ **The procedure that will be used when charges are filed, including short time-frames.** On some campuses, procedures have dragged on for several months. This benefits no one—not the victim, the accused, nor the institution. Campus disciplinary proceedings are not trials to determine innocence or guilt but to determine if institutional policy has been violated.[12] Some experts believe that students should be excluded from serving on such panels; others believe that existing judiciary procedures that include students can be adapted for use in rape and sexual assault cases. In either case, persons who comprise hearing panels should have specialized training about issues concerning acquaintance rape and sexual assault.

Institutions will need to make a decision about whether lawyers are allowed in proceedings. If so, their participation can be limited to advising their client, but they need not be allowed to speak as part of the proceedings. Some institutions allow a student to bring along an advocate, or personal adviser, usually a faculty or staff member who also acts as a counselor but is not allowed to participate officially in the proceedings.

■ **A statement emphasizing the importance of reporting, and noting that reporting is not the same as filing a formal charge.** Third-party and anonymous reports should be allowed for data-gathering purposes. The reporting procedures should be described.

■ **A provision that allows the school to bring its own charges, as it does in other cases of student misconduct, with the victim acting as a witness.** Some women may find it easier to be a witness in an institutional proceeding against the

11. "Campus Gang Rape: Party Games?" p. 12.
12. "Sexual Assault on Virginia's Campuses," p. 41.

assailant than to bring formal charges on their own. But more important is the institution's obligation to maintain a safe environment for its students and to ensure that its own rules are enforced. To do less not only creates the possibility of legal liability but also weakens the institution's ability to exert moral influence on its own community. Although some people argue that an institution's bringing charges on its own is like a kangaroo court, others note that the institution has an obligation to enforce its own rules and that it often punishes students (sometimes without a hearing or due process) when other infractions of rules occur. It is assumed that institutions would bring charges only when there is evidence that institutional policy has been violated.

■ **A provision that allows for quick changes in housing before a charge is adjudicated when both parties are in the same dormitory.** On a number of campuses, victims have been forced to remain in the same housing unit as the accused while the charges are being adjudicated. Harassment is not uncommon. The victim should have the choice of remaining in the same housing or being moved to another housing unit, without additional charge or penalty. If the victim chooses to remain in the same housing and wants her assailant moved, individual counseling might help in facilitating a change in living quarters for one or both parties. In the event that counseling is unsuccessful or inappropriate, a modified hearing procedure should be available. In some cases, an immediate hearing to determine alternate living arrangements is preferable. The appropriate standard of proof should be similar to that used at a preliminary hearing in criminal proceedings—that is, whether there is sufficient evidence to believe that a crime was committed and that the accused probably committed it.[13]

■ **A list of resources available for persons who are assaulted, including counseling services and the name of the person who can assist victims in obtaining services.**

■ **How to get more information about the policy.** The names of persons and various offices such as student life or the women's center should be listed.

■ **A list of victims' rights.** Most student judicial policies describe the rights of the accused; few describe the rights of the victim. An emerging trend both on and off campus is to describe the rights of victims of rape. One report suggests that the following rights be included in college judicial policies:[14]

- The right of victims to have a person of their choice accompany them throughout the disciplinary hearing.
- The right to remain present during the entire hearing.
- The right, as established in many state criminal codes, not to have irrelevant past sexual history discussed during the hearing.

13. "Sexual Assault on Campus," p. 23.
14. Ibid, p. 21-22.

- The right to make a "victim impact statement" and to suggest an appropriate penalty if the accused is found in violation of the code.
- The right to be informed immediately of the outcome of the hearing.[15]

Some experts have also suggested that victims be encouraged to report rape by being held harmless on other violations (such as underage drinking) committed in connection with the rape.[16]

- **A list of the rights of the accused.** Many student judicial policies provide for these rights, such as due process, the right to a speedy hearing, the right to know what the evidence is, and an opportunity to rebut evidence.

Some institutions, most notably the University of Rochester, are developing "user friendly" procedures that retain due process and other rights but aim at making the procedures less legalistic and bureaucratic so that the accused and the accuser are more comfortable in the process and its outcome.

### *Informal Options*

What should an institution do when it believes a rape has occurred and yet the victim is unwilling to file a formal charge or participate in any formal action against the perpetrator? In many instances, women who are victims of acquaintance rape do not want the perpetrator to go to jail; they want the perpetrator to know that what he did will not be tolerated, and they want to feel safe.[17] Although the institution's options are limited in these circumstances, the institution can consider the following:

- With the victim's permission and respecting her right for privacy, issue a strong statement acknowledging that campus rape has occurred and condemn it in the strongest language possible. Use the incident as an educational experience to alert the community.
- Have someone in authority, such as the dean of students or the president, meet with the perpetrator and inform him that, although no charges were filed, the school has reason to believe that he committed a rape. The implications of such behavior should be described, and the session should serve as warning to the student.
- If the victim wants to confront the perpetrator, a conference between the two could be arranged. While this meeting would not be considered mediation, since the parties would generally not be negotiating an agreement, the third party present should be trained in mediation techniques, which are more appropriate in this setting, than counseling techniques. The

15. On some campuses women have been told that they cannot be informed because of supposed confidentiality regulations.
16. "Sexual Assault on Virginia's Campuses," p. 43.
17. Ibid., p. 41.

third party can help the students understand what the other is feeling and help them to talk to each other about what happened.

- The victim might be counseled about what other steps she might want to take, such as filing criminal charges, suing the perpetrator in a civil suit, or writing the perpetrator a letter about how she feels about his behavior.

### *Conducting An Investigation*

Investigations of possible criminal conduct raise issues that may not occur in investigations of other misconduct. When a rape has been reported, institutions should take the following steps:

- Appoint one person to be in charge of the investigation, and detail the lines of communication. This will not only avoid duplication of effort and confusion but also will help students know who should receive information. Ensure that the person in charge keeps written records.
- Provide training for the investigator about sexual assault, its consequences, and the blame-the-victim phenomenon. This is best done well in advance of a reported assault.
- Inform the accused and witnesses of their legal rights, just as the victim has been informed. As mentioned earlier, voluntary testimony is admissible in a criminal proceeding.
- Allow testimony by "fresh complaint" witnesses, persons to whom the victim spoke immediately after the incident occurred. Character witnesses for either party should not be allowed.[18]
- Hand over the results of any internal investigation to the appropriate police agency immediately, if the victim decides to press criminal charges. Institutional internal proceedings are separate from criminal proceedings and should continue unless the victim decides otherwise.

18. "Report of the Date Rape Task Force, Harvard and Radcliffe Colleges," p. 25.

# CHAPTER 9
# *Educational and Preventive Measures*

Having policies in place is only the first step in addressing date rape on campus. Although many schools have good programs for students about alcohol and drug abuse, they have yet to develop similar programs about sexual assault. A comprehensive educational program can do much to prevent campus rape. The following activities have been successfully undertaken at many institutions:

- Involving senior administrators in the program. Support from top administrators offers additional credibility and visibility within the institution and encourages the involvement of others. The board of trustees, in conjunction with the president, can issue a strong statement condemning sexual assault and supporting campus educational efforts.
- Creating a central committee and/or office reporting to the president whose responsibility is to deal with campus sexual violence. Initially, the committee investigates the problem of campus sexual misconduct through interviews, surveys, or hearings and makes recommendations for policies and programs. Once the program is in place, the office may operate the program, and the committee may monitor its effectiveness and make additional recommendations. Many campuses have done this by recruiting members from all sectors of the campus.
- Reporting annually about the incidence of rape, how cases are resolved, what training programs were conducted, what problems remain, which policies need to be changed, and what else needs to be done.
- Developing programs and activities to increase general awareness of the problem of sexual assault.
    - Distributing the institution's policy to every student when the policy is developed and then at the beginning of each school year.
    - Initiating programs on campus rape, such as mock trials, lectures, films, videos, workshops, discussions, Take Back the Night Marches, and Rape Awareness Week.
    - Conducting programs that imbed rape awareness in the larger context of interpersonal relationships between men and women, including sexual stereotyping, rights, and responsibilities.
    - Inviting local or campus police to talk to students about the legal implications of acquaintance rape.
    - Developing written materials such as flyers, brochures, and bookmarks and disseminating them widely. Include the materials in orien-

tation materials and registration packets or disseminate to all students by other means. Include information about what to do in case of rape or if a friend is raped.

- Using campus mailings to disseminate information about campus rape. In the wake of a well-publicized rape at the University of California at Berkeley, the chancellor sent a letter to every member of the community—students, staff, faculty, and administrators—indicating that sexual misconduct would not be tolerated at Berkeley.
- Displaying informational posters around the campus.
- Presenting programs throughout the year to the community as a whole and in smaller settings, such as classrooms, dormitories, and fraternity and sorority houses.
- Including in rape-awareness programs and materials information on how students can watch out for and protect one another at parties and in vulnerable situations.
- Providing information about the interplay of alcohol and drugs and sexual assault. Incorporate information about rape into existing alcohol and drug-education programs.
- Developing peer-education programs, run by students with professional guidance from staff. These have been exceptionally successful programs.
- Placing advertisements in campus and community newspapers offering information about preventing sexual violence.
- Using campus radio and television, as well as local media, for public-service information about sexual assault.

- Developing programs for specific groups. Many of the foregoing suggestions will also be relevant for specific groups.
  - *First-year students:* New students are the most vulnerable to campus rape, especially during the first six weeks of school. Send a letter to new students *before* they arrive on campus that outlines the institution's policy and expectations about this issue.[1] The president of the University of Delaware sent a brochure to parents of all incoming students explaining the issue of sexual assault.

    Hold programs for incoming students as part of their orientation. Many schools do this, using informal theater, film, and other formats, followed by discussion, to help students understand this issue.
  - *Fraternity and sorority groups:* A disproportionate number of rapes occur during fraternity-related activities, and many victims are members of sororities.

1. Recommended by the "Report of the Date Rape Task Force, Harvard and Radcliffe Colleges," February 10, 1992, p. 36.

Some national organizations of fraternities and sororities have developed special materials for use with these groups.

- Involve Interfraternity Council and Panhellenic offices in developing programs for fraternities and sororities. At the University of Dayton, all pledges and officers must attend four mandatory sessions, including one on rape and sexual assault.
- Encourage or require fraternities to develop their own standards for ethical sexual behavior and to plan rape-awareness programs.
- Require special training for fraternity and sorority officers about their responsibilities for their organizations.

■ *Athletes:* A number of schools require mandatory training for all varsity athletes, including the University of Rochester and St. John's University. At Cornell University, varsity athletes cannot play on the team until they have attended the rape-awareness program.

- Provide training on the issue of sexual assault for coaches and other athletic personnel.
- Involve coaches and other athletic personnel in rape-awareness training for athletes, as does the University of Rochester. Their influence on team members can be a positive asset in developing rape awareness on the part of athletes.
- Involve athletes as trainers for rape-awareness programs, as does the University of Maine.

■ *Men:* Programs need to be tailored so that men will attend them.

- When programs are being advertised, state expressly that men are encouraged to attend. The State University of New York at Buffalo called its program "Not for Women Only."
- Develop specific materials, using clever titles, aimed at men.
- Involve men in the training. Campus leaders, such as fraternity house presidents, captains of athletic teams, and student government officers can often influence their friends and other students. Male faculty and other men can facilitate or cofacilitate training sessions.
- Post announcements about rape-education information in places where men will see them, such as men's locker rooms, living quarters, and men's rooms.

■ *Faculty, staff, and administrators:* Faculty, staff, and administrators need to understand these issues as well as students. Often students will first confide about a rape to a faculty or staff member or administrator they trust. These persons need to be aware of the institution's policies, procedures, and resources on sexual assault. Although the problem of faculty and staff rape is beyond the scope of this report, institutions might want to examine existing policies to see how such rapes would be handled and make necessary changes.

- Provide written information as well as an orientation session for all faculty, staff, and administrators, specifying their responsibilities and what to do when a student comes to them.

- *Senior administrators:* Certain administrators need information about campus rape, so that when rapes occur they will know how to handle them with neither the victim's nor the institution's well-being compromised.
- *Personnel whose responsibility is likely to include dealing with campus rape, such as counselors, campus police, health services personnel, residence hall staff, fraternity and sorority advisers, campus chaplain, women's center staff, and dean of student's staff:* Provide special training for these groups so that they know what their responsibility is when rapes are reported either formally or informally. Develop written materials describing their responsibility.
  - Provide specialized training for those people who may be involved in treating rape survivors.
- *Resident assistants:* These students are often the first to hear about a rape. They need training in how to handle it, whom to call, what to say, and what not to say. It is especially important that men who deal with victims are trained about these issues and are sensitive, sympathetic, and caring.

Board members can also request that the institution's annual report to them include information concerning the effectiveness of current procedures, educational efforts, the number of incidents, and problems.

### *Publicity About Rape and Sexual Assault*

When rapes occur, appoint a campus spokesperson to be responsible for handling inquiries and dealing with media to ensure that there is an accurate, single source of information representing the institution. The campus community should be informed about sanctions imposed on individuals and groups such as fraternities.

Some institutions, believing that any publicity about rape and sexual assault, including prevention programs, may have a negative impact on admissions, are reluctant to allow any publicity at all. It is far more helpful to students (and perhaps in avoiding institutional liability) to deal with the issue more openly. For example, campus promotional materials might contain a statement about campus rape as a national problem, followed by a description of what the particular institution is doing about it. At one state institution with an extensive rape-prevention program, the applications and enrollment of women increased *after* a well-publicized fraternity gang rape. Almost every account of the rape in newspapers throughout the state included a description of the institution's comprehensive rape-awareness program, reassuring students and their parents that this institution addressed the problem.

# CHAPTER 10
# *Response to Victims*

On some campuses, no one has ever contacted the victim after she reported that she had been raped. Other campuses have a comprehensive set of services and procedures for rape victims. These should include the following:

■ Written procedures for responding to women who have been raped. Protocols should be developed for campus security forces, health and counseling personnel, student-affairs personnel, housing staff (including student resident assistants), women's center staff, and the public-relations office. The protocols should consist of the following:[1]

- A description of the institution's policy on sexual assault.
- The names and titles of college personnel who should be notified, how, when, and which notification must include the victim's consent. Provide anonymity in institutional reports.
- Legal reporting requirements and how to fulfill them.
- Services for victims and the personnel responsible, such as who accompanies victims, with their consent, for medical help or to the police, and who refers them (and where) for counseling.
- A description of campus and off-campus resources available to the victim, including local rape-crisis centers and medical facilities, especially hospitals and private physicians familiar with rape examination procedures.
- Procedures for ongoing communication and case management with the victim and the personnel responsible. This should include keeping her informed about the progress of the case and helping her with academic, housing, or other difficulties that may arise as a result of the sexual assault. (See the section on victim advocates on page 60.)
- Procedures for guaranteeing confidentiality and working with the victim to decide how inquiries from the press, students, and parents will be handled.
- Procedures for providing information and assisting the victim in deciding what she wants to do with respect to criminal prosecution, civil procedures, institutional charges, alternative housing arrangements, and so forth.

1. Most of these procedures are from "Sexual Assault on Campus," pp. 30-31.

- Procedures for follow-up health care, including testing for pregnancy, sexually transmitted diseases, and HIV/AIDS.
- Procedures for making counseling services available to boyfriends and other friends of victims to help them cope with the aftermath of rape, such as local rape-crisis centers or campus staff with specific training in dealing with sexual assault.

Victims should be encouraged to seek medical attention, to allow evidence to be collected, and to make a statement to the police. Even if they do not wish to file charges, this evidence will be helpful in keeping records of incidents and in identifying problem situations, and will be available if they decide to file charges later. The victim's right to refuse, however, must be respected.

A number of institutions have a victim advocate responsible for helping the survivor deal with institutional procedures and the aftermath of the rape. On some campuses, victims have had to talk to several people to receive help or information and initiate internal disciplinary proceedings. The advocate helps the victim negotiate the system and provides information about her rights and options, progress on her case, and services. Should hearings be held, the advocate is allowed to be present. If the victim's academic work is affected, the advocate can accompany the victim to talk to faculty members or speak to them on her behalf. The advocate stays in touch with the victim throughout the remainder of her time in school, so that her progress is monitored and she receives any support she may need in completing her academic career.

Victim services must be coordinated. The University of Connecticut has a "victim support team" made up of representatives from various campus departments, such as the women's center, police, dean of students, residential life, health center, counseling and student development, and sexual-assault crisis center. The team links the available support services, educates staff members, improves the referral system, and ensures uniform definitions and protocol.

Should a victim wish to take a leave of absence, she should be able to do so without penalty. If she does not finish the semester, a tuition refund should be available. Funds should be available for therapy when needed to help mitigate the effect of the assault.

Campuses, like many social institutions, have changed and now must often confront issues they formerly did not address a decade ago. By arming themselves with knowledge and developing sound policy and procedures well in advance of a crisis, board members can provide the guidance their institutions need to deal constructively with the difficult issues of sexual harassment and rape.

# *APPENDIX A*
# *University of Iowa Policy on Consensual Sex*

The University of Iowa not only prohibits sexual harassment of students but also forbids faculty-student romantic relationships, even when both parties have apparently consented to the relationship. The policy also defines sexual harassment and gives examples of prohibited activities, including sexist jokes and sexual remarks "including a pattern of conduct (not legitimately related to the subject matter of a course if one is involved) intended to discomfort or humiliate or both." The portion of the policy dealing with consensual relationships is as follows:

### *Consensual Relationships*

Section 5. *Definition.* As used in this Division, the terms "faculty" or "faculty member" mean all those who teach at the University, and include graduate students with teaching responsibilities and other instructional personnel.

Section 6. *Rationale.* (a) the University's educational mission is promoted by professionalism in faculty-student relationships. Professionalism is fostered by an atmosphere of mutual trust and respect. Actions of faculty members and students that harm this atmosphere undermine professionalism and hinder fulfillment of the University's educational mission. Trust and respect are diminished when those in positions of authority abuse, or appear to abuse, their power. Those who abuse, or appear to abuse, their power in such a context violate their duty to the University community.

(b) Faculty members exercise power over students, whether in giving them praise or criticism, evaluating them, making recommendations for their further studies or their future employment, or conferring any other benefits on them. Amorous relationships between faculty members and students are wrong when the faculty member has professional responsibility for the student. Such situations greatly increase the chances that the faculty member will abuse his or her power and sexually exploit the student. Voluntary consent by the student in such a situation is suspect, given the fundamentally asymmetric nature of the relationship. Moreover, other students and faculty may be affected by such unprofessional behavior because it places the faculty member in a position to favor or advance one student's interest at the expense of others and implicitly makes obtaining benefits contingent on amorous or sexual favors. Therefore, the University will view it as unethical if faculty

members engage in amorous relationships with students enrolled in their classes or subject to their supervision, even when both parties appear to have consented to the relationship.

Section 7. *Consensual Relationships in the Instructional Context.* No faculty member shall have an amorous relationship (consensual or otherwise) with a student who is enrolled in a course taught by the faculty members or whose academic work (including work as a teaching assistant) is being supervised by the faculty member.

Section 8. *Consensual Relationships Outside the Instructional Context.* Amorous relationships between faculty members and students occurring outside the instructional context may lead to difficulties. Particularly when the faculty member and student are in the same academic unit or in units that are academically allied, relationships that the parties view as consensual may appear to others to be exploitative. Further, in such situations (and others that cannot be anticipated), the faculty member may face serious conflicts of interest and should be careful to distance himself or herself from any decisions that may reward or penalize the student involved. The faculty member who fails to withdraw from participation in activities or decisions that may reward or penalize a student with whom the faculty member has or has had an amorous relationship will be deemed to have violated his or her ethical obligations to the student, to other students, to colleagues, and to the University.

# *APPENDIX B*
# *Resources for More Information*

### *Sexual Harassment*

*Academic and Workplace Sexual Harassment, A Resource Manual,* Michele A. Paludi and Richard B. Barickman, State University of New York Press, Albany, N.Y., 1991.

"Academic Harassment: Sex and Denial in Scholarly Garb," Louise F. Fitzgerald, Lauren M. Weitzman, Yael Gold, and Mimi Omerod, *Psychology of Women Quarterly,* Volume 12, No. 3, September 1988. pp. 329-340.

"Federal Laws and Regulations Prohibiting Sex Discrimination in Educational Institutions," Chart prepared by the National Women's Law Center and available from the Center for Women Policy Studies, Washington, D.C., 1990.

"Gender Dilemmas in Sexual Harassment Policies and Procedures," Stephanie Riger, *American Psychologist,* Volume 46, No. 5, May 1991. pp. 497-505.

"In Case of Sexual Harassment, A Guide for Students," Jean O'Gorman Hughes and Bernice R. Sandler, Center for Women Policy Studies, Washington, D.C., 1986.

*Initiatives,* Journal of the National Association for Women in Education, Special Issues on Sexual Harassment, Volume 52, Nos. 3 & 4, 1989 and 1990.

*Ivory Power, Sexual Harassment on Campus,* Michele A. Paludi, Editor, State University of New York Press, Albany, N.Y., 1987.

"Peer Harassment: Hassles for Women on Campus," Jean O'Gorman Hughes and Bernice R. Sandler, Center for Women Policy Studies, Washington, D.C., 1988.

"Sexual Harassment on Campus: A Legal Compendium," Second edition, National Association of University Attorneys, Elsa Kircher Cole, Editor, Washington, D.C., 1990.

"Sexual Harassment on Campus: A Policy and Program of Deterrence," American Council on Education, Washington, D.C., 1992.

*Sexual Harassment in Higher Education: Concepts & Issues,* Louise F. Fitzgerald, National Education Association, Washington, D.C., 1992.

"Sexual Harassment: Research and Resources, A Report in Progress," National Council for Research on Women, New York, N.Y., 1991.

*The Lecherous Professor,* second edition, Billie Wright Dzeich and Linda Weiner, University of Illinois Press, Champaign, Ill., 1991.

"Violence Against Women as Bias Motivated Hate Crime: Defining the Issues," Lois Copeland and Leslie R. Wolfe, Center for Women Policy Studies, Washington, D.C., 1991.

***Sexual Assault***

"Complying with the Campus Security Act—1990, Title II—Crime Awareness and Campus Security, National Association of Student Personnel Administrators, Washington, D.C., nd.

"Friends Raping Friends; Could It Happen to You?" Jean O'Gorman Hughes and Bernice R. Sandler, Center for Women Policy Studies, Washington, D.C., 1987.

"Campus Gang Rape: Party Games?," Julie Ehrhart and Bernice R. Sandler, Center for Women Policy Studies, Washington, D.C., 1985.

*Fraternity Gang Rape: Sex, Brotherhood, and Privilege on Campus*, Peggy Reeves Sanday, Columbia University Press, N.Y., 1990.

*I Never Called It Rape, The Ms. Report on Recognizing, Fighting and Surviving Date and Acquaintance Rape*, Robin Warshaw, Harper & Row, Publishers, New York City, N.Y., 1988.

*Acquaintance Rape and Sexual Assault: A Prevention Manual*, Andrea Parrot, Learning Publications, Inc., Holmes Beach, Fla., 1991.

"Taking a Stand Against Sexual Assault." Karen Mulhauser, *AGB Reports*, Vol. 34, No. 2, pp. 6-11.

*Responding to Sexual Assault on Campus: A Guidebook for Colleges*, Aileen Adams and Gail Abarbanel, Rape Treatment Center, Santa Monica Hospital, Santa Monica, Calif., 1993.

"Report of the Date Rape Task Force, Harvard and Radcliffe Colleges," February 10, 1992.

*Sexual Assault on Campus: The Problem and the Solution*, Carol Bohmer and Andrea Parrot, Lexington Books, N.Y., 1993.

"Sexual Assault on Virginia's Campuses," Report of the State Council of Higher Education and the Task Force on Campus Rape to the Governor and the General Assembly of Virginia, Senate Document No. 17, 1992.

"Violence Against Women as Bias Motivated Hate Crime: Defining the Issues," Lois Copeland and Leslie R. Wolfe, Center for Women Policy Studies, Washington, D.C., 1991.

*Real Rape*, Susan Estrich, Harvard University Press, Littleton, Mass., 1987.

# *About the Author*

Bernice R. Sandler is a senior associate with the Center for Women Policy Studies in Washington, D.C., where she writes and consults with colleges and universities about achieving equity for women on campus. She has given more than 1,500 campus presentations and written more than 60 articles about sex discrimination.

She previously directed the Project on the Status and Education of Women at the Association of American Colleges, where she published more than 100 papers, including the first reports on campus sexual harassment, gang rape, campus peer harassment, and the ways men and women are treated differently in the classroom. She was the first person appointed to work for a congressional committee specifically on women's issues and the first to testify about discrimination against women in education. Working to get existing federal regulations enforced when there were no laws prohibiting sex discrimination in education, she filed the first charges of sex discrimination against more than 250 colleges and universities. She also played a major role in the development and passage of Title IX and other laws prohibiting sex discrimination in education.

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*Suite 400*
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*202/296-8400*